

144 FERC ¶ 61,237
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 27, 2013

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket No. ER13-2373-000

New York Independent System Operator, Inc.
Attention: Sara B. Keegan, Esq.
10 Krey Boulevard
Rensselaer, NY 12144

Dear Ms. Keegan:

1. On September 12, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ the New York Independent System Operator, Inc. (NYISO) submitted a proposed revision to section 8.1.3(c) of its Market Administration and Control Area Services Tariff (Services Tariff) to correct a citation error. NYISO requests waiver of the 60-day prior notice requirement of the Commission's regulations under the FPA² to permit an effective date of September 15, 2013. NYISO also requests certain waivers of the provisions of section 8.1.3 of its Services Tariff. This order grants waiver of the 60-day prior notice requirement and accepts NYISO's proposed revision to become effective September 15, 2013, as requested, and grants the requests for waivers of the Services Tariff.

2. NYISO explains that section 8.1.3(c) is a new Services Tariff provision that was accepted by the Commission on August 8, 2013, in Docket No. ER13-1683-000 to be effective September 15, 2013.³ NYISO states that the provision facilitates the NYISO's compliance with the Commodity Futures Trading Commission's (CFTC) Final Order to exempt certain specified transactions of regional transmission organizations and

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.11 (2013).

³ *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,120 (2013).

independent system operators.⁴ New section 8.1.3 requires that each market participant transacting in the ISO-administered markets must at all times be, among other things, “(c) a ‘person who actively participates in the generation, transmission, or distribution of electric energy,’ as defined in paragraph 5(g) of the Final Order of the [CFTC] at 77 FR 30569.” Section 8.1.3 requires that each customer demonstrate compliance with the requirements of this section by submitting to NYISO an officer’s certificate on or before September 15, 2013, certifying, *inter alia*, that the customer is now and will remain in compliance with this requirement. NYISO states that it discovered that the currently effective language of section 8.1.3(c) reflects an incorrect citation to the CFTC Final Order. Specifically, the currently effective provision incorrectly cites “77 FR 30569” when, in fact, the correct cite for the CFTC Final Order is “78 FR 19879.” Therefore, NYISO proposes to correct this error.

3. NYISO requests that the Commission waive the 60-day prior notice requirement and accept the proposed tariff revision effective September 15, 2013.

4. NYISO also requests a limited waiver to allow it to accept officer’s certificates from market participants that include the incorrect citation and deem those certificates to be compliant with the certification requirement set forth in section 8.1.3. Additionally, NYISO requests a limited waiver to allow it to accept the officer’s certificates required by section 8.1.3 on or before September 23, 2013, instead of the September 15, 2013 tariff-prescribed deadline. NYISO explains that this waiver will provide market participants with additional time to submit (or resubmit if they choose) certificates with the corrected citation, and provide the NYISO with additional time to consider those certificates.

5. NYISO states that the Commission evaluates a number of issues in determining whether to authorize a tariff waiver. Specifically, NYISO states that these factors are whether: (1) the waiver is of limited scope; (2) a concrete issue needs to be remedied; (3) the waiver will not have undesirable consequences, such as harming third parties; and (4) the entity seeking the waiver is acting in good faith. NYISO states that it is acting in good faith in requesting the limited tariff waivers. In addition, NYISO states that the requested waivers are limited in scope, remedy a concrete issue and will not harm any third parties or have other undesirable consequences.

⁴ See Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,879 (April 2, 2013) (CFTC Final Order).

6. Notice of NYISO's September 12, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 58,299 (2013), with interventions and protests due on or before September 19, 2013. No protests or interventions were filed.

7. We will grant waiver of the 60-day prior notice requirement for good cause shown and accept the proposed amendment to section 8.1.3(c) of NYISO's Services Tariff, effective September 15, 2013, as requested. The proposed revision corrects the Services Tariff to reflect the appropriate CFTC Final Order cite.

8. We also find that NYISO has demonstrated good cause to grant the requested tariff waivers. The Commission has previously granted one-time waivers of tariffs in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.⁵

9. NYISO has demonstrated that its requested waivers satisfy the aforementioned conditions. Granting the waivers will facilitate NYISO's compliance with the CFTC Final Order to exempt certain specified transactions of regional transmission organizations and independent system operators.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO-New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).