

146 FERC ¶ 61,061  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

New York Independent System Operator, Inc.

Docket No. ER14-1138-000

ORDER GRANTING WAIVER

(Issued January 31, 2014)

1. On January 22, 2014, New York Independent System Operator, Inc. (NYISO) requested a limited waiver of sections 21.4 and 21.5.1 of its Market Administration and Control Area Services Tariff (Services Tariff) to the extent the sections set a temporary bid cap of \$1,000/MWh.<sup>1</sup> In response to spikes in natural gas costs caused by recent extreme cold weather, NYISO requests that the Commission waive the subject tariff requirements from January 22, 2014 through February 28, 2014, to allow generators to recover demonstrated costs that they actually incur to operate, should those variable costs exceed the tariff's \$1,000/MWh bid restriction. As discussed below, the Commission finds good cause to grant the requested waiver for the time period requested.

**I. Background and Details of the Filing**

2. Sections 21.4 and 21.5.1 of NYISO's Services Tariff set forth bid restrictions that limit day-ahead and real-time energy bids to  $\pm$  \$1,000/MWh and require NYISO to reject bids that exceed the restrictions. NYISO states that the recent high natural gas prices could cause some generators' actual costs of producing incremental energy to exceed the bid restrictions. NYISO explains that extreme winter weather and an unprecedented spike in natural gas prices have driven gas-fired generators' fuel costs to previously unseen levels. NYISO states that temperatures during a cold snap that began on January 21, 2014 were forecast to be 20 degrees below average for New York City at this time of year, and that the January 22, 2014 day-ahead index price for natural gas at the Transco Z6 NY hub, which determines the natural gas prices incurred by generators in

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<sup>1</sup> Services Tariff, Attachment F – Temporary Bid Caps, section 21.4, Establishment of Bid Restrictions (6.0.0) and section 21.5.1, Applicability of Bid Restrictions (6.0.0).

and around New York City, exceeded \$120/MMBtu. According to NYISO, this compares to the average price at the Transco Z6 NY hub of \$9.98/MMBtu for January 2013 and \$10.39/MMBtu for February 2013 and that, during cold weather in 2013, the Transco Z6 NY natural gas price ranged only from \$16/MMBtu to less than \$40/MMBtu.

3. Accordingly, NYISO requests a limited waiver of sections 21.4 and 21.5.1 of its Services Tariff from January 22, 2014 through February 28, 2014, i.e., the “remainder of the coldest portion of the winter season,” to protect the reliability of the New York State Power System by providing New York Control Area generators that must operate on natural gas the opportunity to recover the actual costs that they incur to operate, should those costs exceed the \$1,000/MWh bid restriction. NYISO argues that failure to implement measures to permit generation owners to recover the costs they incur to supply Incremental Energy and/or Minimum Generation could reduce participation in the markets that NYISO administers, which NYISO states could be detrimental to reliability.

4. NYISO states that, if the waiver is granted, it will “reimburse affected generators for their demonstrated, actual costs of producing Incremental Energy and/or Minimum Generation that exceed the \$1,000/MWh Bid Restriction” through uplift via a Bid Production Cost Guarantee payment.<sup>2</sup> NYISO states the supplemental payment will be available for both day-ahead and real-time market commitments.<sup>3</sup> NYISO proposes to require generators (or the market party responsible for offering the generator) that will incur variable costs in excess of the bid restriction to comply with the following: (1) submit a bid at \$1,000/MWh for the (portion of) energy for which costs will exceed that price; (2) submit an email to NYISO specifying the fuel costs it expects to incur; and (3) submit to NYISO documentation with a Services Center Ticket substantiating the fuel costs incurred. NYISO states that it will determine eligibility to recover costs in excess of \$1,000/MWh after-the-fact and the recovery will be limited to demonstrated actual production costs incurred. NYISO states that generators will be expected to offer into the NYISO markets based on the lowest cost fuel available and NYISO will notify the market parties of their obligations to comply with the Commission’s Market Behavior Rules<sup>4</sup> and Market Mitigation Rules of Attachment H of NYISO’s Services Tariff.

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<sup>2</sup> A Bid Production Cost Guarantee (BPCG) payment is a payment made to a generator that is equal to the difference between its bid and the Locational Based Marginal Price (LBMP) when the generator is dispatched out of economic merit order by NYISO or the local transmission owner, *e.g.*, for reliability.

<sup>3</sup> NYISO Transmittal at 3.

<sup>4</sup> 18 C.F.R. § 35.41 (2013).

5. NYISO states that the requested waiver: (1) addresses unforeseen and unprecedented market conditions that threaten the reliability of the New York State Power System; (2) is limited in scope and duration, relies on existing tariff mechanisms as much as possible, and includes safeguards against overcompensating generators; (3) addresses the problem of creating undesirable financial incentives for generators to not offer into the NYISO markets during extreme winter weather when generators are needed; and (4) will not have undesirable consequences because the payments to generators are necessary to ensure reliable electric service during extreme weather conditions. NYISO requests that the Commission issue an order by January 31, 2014.

## **II. Notice of Filing and Responsive Pleadings**

6. Notice of NYISO's filing was published in the *Federal Register*, 79 Fed. Reg. 5395 (2014), with interventions and protests due on or before January 29, 2014. Direct Energy Business, LLC; Entergy Nuclear Power Marketing, LLC; Calpine Corporation; America's Natural Gas Alliance; New England Power Generators Association, Inc.; PSEG Companies; Macquarie Energy LLC; and PJM Power Providers Group filed motions to intervene. The New York State Public Service Commission filed a notice of intervention. The Independent Power Producers of New York, Inc. (IPPNY), New York Transmission Owners<sup>5</sup> (NYTOs), Entergy Nuclear Power Marketing, LLC (Entergy), National Energy Marketers Association (NEM), DC Energy, LLC (DC Energy), and NRG Companies<sup>6</sup> filed motions to intervene and comments. PPL Parties;<sup>7</sup> the Retail Energy Supply Association (RESA); Electric Power Supply Association, PJM Power Providers Group, and the New England Power Generators Association (collectively, the

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<sup>5</sup> Central Hudson Gas & Electric Corporation, Consolidated Energy Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>6</sup> The NRG Companies are NRG Power Marketing, LLC; GenOn Energy Management, LLC; Arthur Kill Power LLC; Astoria Gas Turbine Power LLC; Dunkirk Power LLC; Huntley Power LLC; BRG Bowline LLC; Oswego Harbor Power LLC; and Energy Curtailment Services, Inc.

<sup>7</sup> For purposes of this proceeding, the PPL Parties are: PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Ironwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC.

Competitive Suppliers); and Exelon Corporation (Exelon) filed motions to intervene and protest.

7. On January 30, 2014, NYISO filed an answer to the comments and protests.

**A. Comments and Protests**

8. NYTOs and NRG Companies filed comments in support of the request for waiver, stating that the proposed temporary waiver is the appropriate means to address this short-term issue while providing reliability benefits. In addition, NYTOs state that the Commission should require the NYISO market monitor to submit an informational filing within 30 days of the expiration of the waiver that identifies the amount of energy accepted over the bid cap, the cost associated with providing the energy, and information on bids that were rejected.<sup>8</sup>

9. IPPNY, Entergy, and the Competitive Suppliers support NYISO's filing but request that the Commission: (1) waive the \$1,000/MWh bid cap for the winter period so that bids that reflect actual costs over \$1,000/MWh can set the market clearing price, and (2) direct NYISO to work with stakeholders and submit a compliance filing by March 31, 2014 proposing tariff revisions to permanently eliminate the bid cap or increase it sufficiently to allow bids to reflect actual operating costs. They argue that, while NYISO's request for waiver is a critical first step that should be granted, the proposal deprives the market of accurate price signals reflecting generators' marginal costs for providing power by providing after-the-fact cost-based payments.

10. Similarly, Exelon, PPL Parties, and DC Energy argue that the Commission should grant NYISO's waiver request but require that NYISO allow generators that clear and have costs in excess of the \$1,000/MWh cap to set market clearing prices. Exelon argues that NYISO's waiver is not limited in scope because it would upend the basic premise underlying NYISO's market that the marginal cost unit should set the clearing price. Exelon also argues that waiver will have undesirable consequences by artificially suppressing market clearing prices. NEM agrees, but states that, if requiring NYISO to allow verifiable offers in excess of \$1,000 MWh to set the market clearing price is not possible, then the Commission should require NYISO to specify that the supplemental payments being recovered under Rate Schedule 1 will only be collected from energy load zones where they are incurred. NEM states that NYISO claims the fundamental cause of the problem necessitating the waiver request is the high prices for day-ahead natural gas at the Transco Z6 NY hub for January 22, 2014 which was more than \$120/MMBtu.

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<sup>8</sup> NYTOs January 27, 2014 Comments at 3 (citing *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 6 (2014) (*PJM*)).

NEM argues however that costs for natural gas across New York State are not similar, explaining that the midpoint day-ahead price for January 22, 2014 for the Tennessee zone 4-200 index, which serves portions of Up-State New York, was \$4.87/MMBtu. Therefore, NEM states, that if the only mechanism for generators to recover these costs is through uplift, they must be assigned to customers in and around New York City and not on a state-wide basis.

11. DC Energy also argues that if the Commission approves PJM's proposal to allow generator bids above \$1,000/MWh to set market clearing prices while approving NYISO's uplift approach would lead to inconsistent approaches between the two adjoining RTOs which could lead to problems with interface pricing and flows during extreme spikes in natural gas prices.<sup>9</sup>

12. NRG Companies request that the Commission grant NYISO's waiver request but institute a FPA section 206 proceeding to eliminate the Services Tariff Attachment F bid restrictions and require NYISO to revise its tariff within 60 days to eliminate the \$1,000 MWh bid cap. NRG Companies argue that the bid restrictions, while just and reasonable when instituted, now interfere with actual commodity costs and do not recognize other market enhancements including market monitoring and mitigation measures.

13. RESA contends that the waiver request should be denied unless NYISO agrees to or is ordered to immediately implement a market-based response for the remaining winter period and suspends the \$1,000 MWh offer cap so that LBMP accurately reflects the true marginal costs of serving the marginal megawatt. RESA argues that NYISO does not meet the standard for good cause expressed by the Commission because the requested waiver would harm third parties—retail suppliers—who will bear a significant and unanticipated cost shift resulting from generators' non-market recovery of high spot market natural gas costs. RESA states that such costs are unhedgeable and not transparent unless they are reflected in the LBMP. NEM states that NYISO's petition states that the requested waivers will not have undesirable consequences, such as harming the legitimate interests of third parties. NEM argues, however, that NYISO's filing is based on the incorrect premise that all market participants have the ability to recover uplift costs, but energy supply companies that sell electricity to retail customers in New York State cannot always recover these costs. NEM contends that the problem of not being able to recover these very legitimate costs simply gets shifted from one Market Participant (generators) to another Market Participant (suppliers).

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<sup>9</sup> DC Energy January 29, 2014 Comments at 2.

**B. NYISO's Answer**

14. In its answer, NYISO argues that the Commission should reject protests that seek to use this proceeding to impose significant market changes on NYISO and its stakeholders, making an “end-run” around the NYISO governance process. Rather, NYISO states the Commission should direct market participants to work with NYISO in the stakeholder process to develop tariff revisions that can be implemented in advance of Winter 2014/2015.

15. NYISO argues that the Commission should reject protests that ask the Commission to waive the \$1,000 MWh Bid Restriction and immediately permit offers in excess of the Bid Restriction to set market clearing prices during the requested waiver period. NYISO asserts that it would not be practicable for NYISO to implement this change in an extremely short time frame. NYISO explains that it would take time, and NYISO would have to re-purpose resources in order to revise its market software (including testing) and related procedures (including credit obligations and collateral calls) to allow offers in excess of \$1,000 MWh to set market clearing prices. NYISO contends that the proposals set forth in the protests and comments could harm third parties because they circumvent the NYISO stakeholder process to a greater degree than necessary to address the identified concern and third parties could be harmed if NYISO is forced to rush to make changes to its software to remove the Bid Restriction (including coordination among neighboring RTOs).

16. NYISO also argues that protestors fail to show that NYISO's existing Bid Restriction is unjust and unreasonable, which is the predicate for action under FPA section 206. NYISO explains that it is wary of eliminating the Bid Restriction in order to permit a sudden jump in natural gas prices to immediately be reflected in market clearing prices before it hears from the Commission's Office of Enforcement and its own Market Monitoring Unit that the elevated natural gas prices reflected true scarcity conditions.

**III. Discussion****A. Procedural Matters**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest and or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by NYISO because it has provided information that assisted us in our decision-making process.

**B. Commission Determination**

19. The Commission has previously granted one-time waivers of tariffs in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties.<sup>10</sup>

20. We find that NYISO has demonstrated good cause to grant the request for a tariff waiver because NYISO's requested waiver satisfies the aforementioned conditions. The requested waiver is limited to the period from January 22, 2014 through February 28, 2014. The waiver addresses the concrete problem that generators might be required to provide service to support reliability but without being able to recoup the incremental operating costs that they incur, which would discourage generators from offering service at a time when they are needed. Finally, although granting waiver may result in increased costs to load and increased cost to certain market participants if generators incur verifiable actual energy production costs above \$1,000/MWh, we find that it is appropriate to allow generators to recover such costs in this exigent circumstance.

21. Granting the requested waiver is consistent with the Commission's recent order granting PJM waiver of certain tariff provisions to permit PJM to compensate a generator through a make whole payment that covers its costs above the \$1,000/MWh cap.<sup>11</sup>

22. With respect to parties' arguments that the Commission should additionally order NYISO to allow generators that clear and have costs in excess of the \$1,000/MWh cap to set market clearing prices, we find that such requests are beyond the scope of this temporary waiver request. Within the context of this temporary waiver request, we find that NYISO's proposal to recover the costs in excess of \$1,000/MWh through its existing Bid Production Cost Guarantee mechanism is a reasonable method of cost recovery.

23. In response to arguments raised by NEM that NYISO's proposal will allocate these costs statewide, the NYISO Open Access Transmission Tariff (OATT) details the

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<sup>10</sup> See, e.g., *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012). See also, e.g., *PJM Interconnection, L.L.C.*, 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); *accord ISO New England Inc. - EnerNOC*, 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).

<sup>11</sup> *PJM*, 146 FERC ¶ 61,041.

allocation methods for Bid Production Cost Guarantee payments.<sup>12</sup> The allocation is specific to the causes for the uplift payment and not necessarily statewide; accordingly, we expect NYISO to allocate the Bid Production Cost Guarantee Payments generated by this waiver in accordance with the provisions of its tariffs and pursuant to the reasons that each specific generator is dispatched. Moreover, to the extent that NEM is challenging the existing Bid Production Cost Guarantee payment cost allocation, these arguments are beyond the scope of the current proceeding.

24. We note that under the Services Tariff, NYISO's Market Monitoring and Analysis Department (MMA) is responsible for implementing the requirements of the NYISO tariffs and markets and therefore to verify the after-the-fact analysis of costs submitted as well as to respond to information requests from the Commission.<sup>13</sup> Given the unique nature of NYISO's request, we direct NYISO to submit an informational filing by March 28, 2014 that identifies: (1) the total amount of energy that received compensation pursuant to the terms of the instant waiver; (2) the demonstrated costs of such energy in total and on a unit cost basis; and (3) information detailing requests for compensation pursuant to the instant waiver that were rejected by NYISO and the reason for its rejection.

The Commission orders:

(A) NYISO's request for limited waiver of sections 21.4 and 21.5.1 of the Services Tariff from January 22, 2014, through February 28, 2014 is hereby granted, as discussed in the body of this order.

(B) NYISO is directed to make an informational filing no later than March 28, 2014, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>12</sup> See OATT, Schedule 1 section 6.1.12.

<sup>13</sup> See Services Tariff, Attachment O, section 30.3.3, Duties of MMA.