

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

New York Independent System Operator, Inc.) Docket No. ER09-_____

**NOTIFICATION OF TARIFF IMPLEMENTATION ERRORS
AND REQUEST FOR LIMITED TARIFF WAIVERS
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. (“NYISO”) submits this filing to formally notify the Federal Energy Regulatory Commission (“Commission”) of four errors in the implementation of its Market Administration and Control Area Services Tariff (“Services Tariff”). Two errors involve real-time settlements; the third involves the NYISO’s real-time price setting software; and the fourth involves the inadvertent mis-application of a formula for calculating the Equivalent Demand Forced Outage Rate¹ (“EFORd”) of two generating units. This filing also informs the Commission of the steps that the NYISO has taken to resolve these errors. Finally, this filing requests limited waivers, to the extent necessary, from the application of relevant provisions of the Services Tariff for the time periods affected by each error. As described in greater detail below, the waivers will eliminate potential market uncertainty by affirming that the NYISO will not be required to make retroactive changes to prices or settlements, which the NYISO believes would not be warranted under the circumstances presented here.

The NYISO is mindful of the impact that tariff implementation errors can have on its customers and its markets. In response to the Commission’s February order in Docket No. ER09-405-000, the NYISO has augmented its existing process for notifying Market

¹ Capitalized terms that are not otherwise defined herein should be understood to have the meaning specified in the NYISO Services Tariff.

Participants and the Commission when issues involving tariff implementation are discovered, and has begun the process of enhancing these procedures in consultation with its stakeholders.² In this filing, the NYISO is fulfilling its commitment to identify the error, notify the Commission, correct the error, and pursue process improvements to prevent their recurrence as quickly and as transparently as possible. As noted below, the NYISO has previously informed the Commission's Office of Enforcement and its stakeholders of each issue addressed by this filing.

I. Communications and Correspondence

All communications and service in this proceeding should be directed to:

Robert E. Fernandez, General Counsel
Elaine Robinson, Director of Regulatory Affairs
*Mollie Lampi, Assistant General Counsel
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-7530
Fax: (518) 356-7678
rfernandez@nyiso.com
erobinson@nyiso.com
mlampi@nyiso.com

*Persons designated for receipt of service.

II. Notification of Implementation Issues and Requests for Limited Waivers

A. Implementation Issues Involving Real-Time Settlements

1. Energy Market Settlement for Facilities Fueled by Landfill Gas

a. Notification of Implementation Error

In the process of registering a new customer in September 2008, the NYISO discovered that its settlement software had been compensating approximately 45 MW of

² *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,100 at P 19. See Presentation at March 25, 2009 Management Committee at http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-03-25/agenda_05_NYISO_MC_Proposed_Principles_Tariff_Related.pdf

landfill gas-fired generators for the energy that they produced in real-time in excess of their real-time schedules and did not subject them to undergeneration charges when they were operating below their real-time schedules.³ The NYISO found that the software had been erroneously treating certain landfill gas facilities as if they were “Intermittent Power Resources,” which are covered by a special settlement rule and an exemption from undergeneration charges, although they do not qualify as Intermittent Power Resources under the existing Services Tariff.⁴ This error affected 8.6 MW of landfill gas capacity in 1999 and grew, as more landfill gas facilities were added to the system, to affect 45 MW of such capacity by 2007.

Settlements were correctly applied on a going forward basis as soon as the NYISO completed its review of the appropriate settlement to apply to each landfill gas generator.⁵ Settlements using the correct methodology began for five units on October 20, 2008 with the last two corrected as of December 5, 2008 and March 9, 2009. The NYISO notified the Commission’s Office of Energy Market Regulation of this issue on October 14, 2008, the Office of Enforcement on March 10, 2009 and its Market Participants on March 11, 2009.

The NYISO estimates that the total of payments made in excess of schedules and undergeneration charges not applied approximated \$4.5 million over nine years or approximately .005% of the total energy market transactions in 2008 alone. The NYISO

³ A total of seven generators were affected.

⁴ Intermittent Power Resources are currently defined as wind and solar facilities. *See* Services Tariff Section 2.77a.

⁵ Pursuant to Services Tariff Section 4.5(i) and Rate Schedule 3a, Section 3(i), the NYISO also applies Intermittent Power Resource settlement rules to units selling energy under contracts that pre-dated NYISO start-up. Landfill gas facilities would continue to qualify for the market rules that were being applied if they were providing energy pursuant to such contracts. One landfill gas facility remains eligible for the special settlement rule under this provision.

is reviewing all facilities currently settled as Intermittent Power Resources to ensure they are being appropriately settled and has instituted procedures to ensure that settlements for new facilities are appropriately applied as they enter commercial operation.

Notwithstanding their ineligibility under the NYISO's existing Services Tariff, landfill gas facilities exhibit the characteristics of Intermittent Power Resources in that their fuel supply is not controllable and they cannot follow their real-time energy schedules closely enough to avoid the application of off-schedule penalties. The NYISO therefore believes that landfill gas facilities should, in principle, receive the same treatment as Intermittent Power Resources. The NYISO and its stakeholders have begun the tariff revision process to include landfill gas facilities within this category. On March 25, 2009, the stakeholder Management Committee unanimously approved tariff revisions that would classify landfill gas facilities as Intermittent Power Resources.⁶

b. Request for Waiver

The NYISO respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the tariff provisions regarding the settlement of landfill gas facilities for the months from November 1999 through the day preceding the day in which the NYISO began to apply the settlement methodology required under the existing Services Tariff to each affected facility.

As discussed above, the NYISO incorrectly settled landfill gas facilities in each of these months by paying them for the energy they injected into the system beyond the energy they were instructed to inject and by not assessing undergeneration charges.

⁶ See <http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-03-25/03252009_mc_final_motions.pdf> (memorializing the Management Committee's vote) and <http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-03-25/agenda_09_LFGE_Status_20090325_MC_APPROVED.pdf> (presentation describing the NYISO's proposed tariff revisions).

Under the Services Tariff, these rules apply to qualifying Intermittent Power Resources but not, as of yet, to landfill gas facilities.⁷ As also discussed above, the NYISO and its stakeholders are pursuing amendments to the NYISO tariffs that would entitle landfill gas facilities, going forward, to the same treatment as Intermittent Power Resources.

Pursuant to the provisions of Article 7 of the NYISO Services Tariff, the NYISO is precluded from resettling 96 of the incorrectly settled months (November 1999 through December 2007) in the absence of an order from the Commission or a court of competent jurisdiction.⁸ Although the NYISO is authorized by its Services Tariff to correct generator settlements for the nine months from January 2008 through September 2008, the NYISO has not done so to date in order to avoid what it believes would be an unjust and unreasonable result (*i.e.* a result inconsistent with the prospective tariff changes that the NYISO expects to file soon to ensure that landfill gas facilities will be considered Intermittent Power Resources).

The Commission has previously evaluated a number of factors in determining whether to authorize a tariff waiver to alleviate the effects of an implementation error. These include whether: (i) the underlying error was made in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem needs to be remedied; and (iv) the waiver will not have undesirable consequences, such as harming third parties.⁹

⁷ While payment should not have made for energy injected by these landfill gas facilities above their schedule, nevertheless the energy was consumed by Loads.

⁸ See Services Tariff Section 7.4. The calculation of service months closed to revision is as of October, 2008.

⁹ See *Wisvest-Connecticut*, 101 FERC ¶ 61,372 at 62,551 (2002) (observing that error was “an inadvertent mishap”); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996); *New York Independent System Operator, Inc.* ER02-2318-000, August 13, 2002 Letter Order (granting the NYISO a waiver of retroactive application of Tariff provisions with respect to regulation penalties on units for which the Commission had prospectively eliminated such penalties); *New York*

These settlements were made in good faith. Despite a process intended to provide accurate settlements, the issue went unnoticed by the NYISO and its stakeholders. The NYISO has revised its procedures to ensure that this type of error does not happen again.

The scope of this waiver is limited to the energy from relatively few megawatts on the NYISO system -- approximately 45 MW out of installed capacity of approximately 38,170 MW on the system in the summer of 2008.¹⁰ The major portion of the \$4.5 million overpayment was made in customer invoices that are now closed to revision by the NYISO tariffs. Moreover, the impact of a \$4.5 million error, over nine years, represents less than \$500,000/year.

The discrepancy between the units' settlements and the tariff language for historic periods needs to be remedied. Customers expect finality in the NYISO's invoicing process.¹¹ Although the past settlements for landfill gas facilities were inconsistent with the NYISO tariffs, they were appropriate to the NYISO market design because landfill gas facilities have the same operational attributes that resulted in the establishment of special tariff settlement rules for wind and solar resources. The NYISO and its Market

Independent System Operator, Inc. 102 FERC ¶ 61,347 (2005) (granting the NYISO a discrete waiver of the terms and conditions of the persistent undergeneration penalty calculation pursuant to Rate Schedule 3A to allow the NYISO to use an estimated calculation not contemplated by the tariff on charges due for past periods).

¹⁰ See 2008 Load and Capacity Report at <http://www.nyiso.com/public/services/planning/planning_data_reference_documents.jsp>.

¹¹ The Commission has consistently indicated that unanticipated retroactive price corrections and re-settlements should be avoided when possible. See, e.g., *New York Independent System Operator, Inc.*, 92 FERC ¶ 61,073 ("The use of [retroactive price correction] remedies . . . would create substantial uncertainty in the New York markets and would undermine confidence in them") (2000). See also, *Wisvest-Connecticut, LLC v. ISO New England, Inc.*, 103 FERC ¶ 61,302 at P 20, *order on reh'g*, 104 FERC ¶ 61,262 (2003) ("We will not disturb the finality of past ICAP market transactions by opening the books where months have finally settled."); *Bangor-Hydro Electric Co. v. ISO New England, Inc.*, 97 FERC ¶ 61,339, at 62,590 (2001) (stating that clearing prices resulting from implementation error had been relied upon by market participants, and "to go back and change those prices, when no notice was given by ISO-NE that such a disruption might occur, would do far more harm. . . than is justifiable or appropriate under the circumstances. . . and would be fundamentally unfair to market participants").

Participants are pursuing tariff amendments to conform the tariff and the settlement process, but until that process is complete the discrepancy between NYISO's tariff language and its historic treatment of these facilities needs to be resolved.¹²

The waiver will not have undesirable consequences. However, a denial of the waiver could require the NYISO to reopen invoices, reclaim energy revenues previously paid, and impose off-schedule penalties on a very small set of generators for which the NYISO is pursuing prospective, permanent relief from the settlement rule that imposed such charges. These landfill gas facilities were erroneously settled through no fault or action of their own. Until October 2008, when the energy settlement methodology for most of them was revised, their settlements did not depend on schedule-following behavior and they were likely unaware of the financial consequences that tariff-consistent settlement rules would impose upon them for the same behavior. Indeed, upon notice of the tariff's required settlement methodology, these affected generators began a stakeholder process for the purpose of changing the market rules at issue.

In light of the relatively few megawatts of capacity affected by this discrepancy, the desirability of finality in settlements, and the inequity which would otherwise be visited upon these facilities by attempting to reclaim past energy payments and assessing undergeneration penalties for output already delivered and consumed, the NYISO respectfully requests that the Commission grant it a limited waiver, to the extent necessary, of tariff provisions regarding settlements for these facilities for the months from November 1999 through the end of the period covered by the erroneous computation.

¹² The NYISO's Board of Directors is expected to approve the tariff amendments, previously discussed for these facilities, at its April 21, 2009 meeting.

2. Energy Market Settlement for Special Case Resources

a. Notification of Implementation Error

In the course of reviewing the NYISO's Installed Capacity Manual, the NYISO Staff identified an error in the formula used to calculate payments to Special Case Resources ("SCRs") in 2005 and 2006.¹³ In addition to receiving compensation as providers of Installed Capacity, SCRs are paid when they are called upon to reduce load under one of the NYISO's demand response programs. The Services Tariff directs that Special Case Resources be paid the zonal Real-Time LBMP for the duration of their Load reduction.¹⁴ The formula in the NYISO's settlement process calculated SCR payments as the higher of \$500 or the Real-Time LBMP, as opposed to simply using the Real Time LBMP.¹⁵

The NYISO has calculated that out of the \$6.6 million in energy payments and Bid Production Cost guarantees paid to SCRs in 2005 and 2006, \$316,000 was paid as a result of this error.¹⁶

The NYISO's staff first discovered the payment discrepancy on February 9, 2009. The formula in the NYISO's settlement calculator was corrected on February 18, 2009. The NYISO provided notice to the Commission's Office of Enforcement on February 19, 2009 and to its Market Participants on March 11, 2009.

¹³ SCRs have not been called upon to reduce load since 2006.

¹⁴ See Services Tariff Section 5.12.11(a).

¹⁵ The \$500 minimum price is part of the formula used to calculate Emergency Demand Response Program ("EDRP") payments. See Services Tariff Sections 2.106(b), 4.01. EDRP is a separate demand response program and that formula appears to have been incorrectly used in the settlement calculator for SCR program payments.

¹⁶ The \$316,000 figure probably overstates the impact of the error because, in a number of instances, if the SCRs had not received the additional energy payments they would have received additional Bid Production Cost Guarantee payments.

b. Request for Waiver

Pursuant to Article 7 of its Services Tariff, the NYISO is not authorized to adjust invoices issued for service months in 2005 and 2006 absent an order from the Commission or a court of competent jurisdiction.¹⁷ The NYISO respectfully requests, however, that to the extent that the Commission determines that a tariff waiver is necessary to resolve this issue, the Commission grant such a waiver of the tariff provisions regarding the payments made to SCRs during 2005 and 2006.

The NYISO submits that a tariff waiver is warranted under the evaluation factors that the Commission has considered in previous cases, as described above.¹⁸ The discrepancy between the formula used for settling these facilities' calculation and the calculation method directed by the Services Tariff was a good faith error. It appears the "greater of \$500 or the LBMP" aspect of the formula was inadvertently transcribed from the method used to calculate Emergency Demand Response Program payments.

The requested waiver is of limited scope because it applied to SCR events over a two-year period with a total financial impact of \$316,000. The error was remedied on February 18, 2009 and the NYISO's practice is now compliant with the Services Tariff.

The NYISO seeks herein to resolve the discrepancy between the SCR payments for the period discussed and the tariff language. The Commission's action on this waiver will resolve the discrepancy for the period in question.

Granting the waiver will not have undesirable consequences. The settlements for the period in question have been "finalized" under the NYISO's tariffs, meaning that the appropriate time period has run for challenges and adjustments and the final bills were

¹⁷ See Services Tariff Section 7.4.

¹⁸ See the discussion of previous Commission determinations on waiver requests *supra* at footnote 9.

issued. The magnitude of the error is relatively small: less than five percent of the total SCR payments made for the period and a much smaller percentage of the total energy market. The NYISO respectfully requests that the Commission consider that market certainty in this situation outweighs the interest in accuracy which would require re-opening bills that have long been finalized.

In light of the relatively small overpayment and the desirability of finality in settlements, the NYISO respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of Services Tariff provisions regarding these SCR overpayments.

B. Implementation Issues Involving the NYISO's Real-Time Price-Setting Software

1. Notification of Implementation Error

In the course of developing tariff revisions which were recently filed with the Commission,¹⁹ the NYISO discovered an inconsistency between the Services Tariff and the NYISO's software with regard to participation in the real-time price-setting process of units scheduled to provide Regulation Service. Attachment B to the Services Tariff directs the NYISO to exclude units scheduled to provide Regulation Service from the real-time price setting process by treating them as "fixed" units rather than "flexible" units.²⁰ The NYISO's real-time commitment and dispatch software, however, includes units scheduled to provide Regulation Service among the other "flexible" resources it uses in establishing real-time prices.

¹⁹ See March 11, 2009 Letter to Secretary Bose from Mollie Lampi, Assistant General Counsel, New York Independent System Operator, Inc.

²⁰ See Services Tariff Attachment B, Section I.A.1 b (ii). Identical language is found in Attachment J to the NYISO's Open Access Transmission Tariff ("OATT") (which generally parallels Attachment B to the OATT). For convenience, all references in this filing to Attachment B to the Services Tariff should be read as encompassing Attachment J to the OATT as well).

Attachment B's direction to treat units scheduled to provide Regulation Service as "fixed" rather than "flexible" units and exclude them from real-time price setting is inappropriate for the NYISO's market design. It is also inconsistent with two other provisions in the NYISO's Services Tariffs, the first of which requires these units to bid as "flexible" units, not as "fixed" units.²¹

The Services Tariff also stipulates that Regulation Service market clearing prices are to be calculated in the real-time price-setting process in a manner that requires the inclusion of units scheduled to provide Regulation Service in the process. The Services Tariff requires the NYISO to include, in the Regulation Service market clearing price, any foregone margins that would have been earned by units scheduled to provide Regulation Service had they, instead, been scheduled to provide energy and/or Operating Reserves in that interval.²² This calculation can be performed only if units scheduled to provide Regulation Service are treated as "flexible" in the real-time price setting process.²³

Including units scheduled to provide Regulation Service as "flexible" rather than "fixed" units in the price setting pass promotes efficient real-time energy and Regulation Service prices, is appropriate to the NYISO market design, and is consistent with existing software. The fact that flexibly bid resources also provide Regulation Service is immaterial to the desirability of including them in the pricing process. Moreover, a market design that includes units scheduled to provide Regulation Service in the real-time

²¹ See Services Tariff Section 4.4.2.B.1.

²² The underlying calculation is the development of a Regulation Service constraint Shadow Price which is then incorporated into the Regulation Service clearing price. See Services Tariff Rate Schedule 3, Section 5.1.

²³ *Id.*

price setting process maintains an important consistency between the NYISO's methods of establishing Day-Ahead and real-time energy and Regulation Service prices.

The NYISO provided notice of the inconsistency between the NYISO's real-time price-setting process and Attachment B of its Services Tariff to the Commission's Office of Enforcement on February 19, 2009 and to its Market Participants on February 20, 2009. The NYISO is not implementing a correction to its real-time price setting process because the code operates as intended and, as previously discussed, complies with other provisions of its Services Tariff. The NYISO's stakeholders share this view and the stakeholder Management Committee recently voted unanimously to approve amendments that will conform the tariff to the NYISO's software code on this issue.²⁴

2. Request for Waiver

Although the Services Tariff's directives are not consistent on this issue, the NYISO, out of an abundance of caution, respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the Attachment B provisions regarding the role of units scheduled to provide Regulation Service in the real-time pricing process. The NYISO submits that this issue warrants a waiver under the evaluation factors used by the Commission in its previous determinations on whether to authorize a tariff waiver to alleviate the effects of an error.²⁵

The discrepancy between the real-time pricing description in Attachment B and the NYISO's software was a good faith error. The amendments to Attachment B were

²⁴ See <http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-03-25/03252009_mc_final_motions.pdf> (memorializing the Management Committee's vote); <http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-03-25/agenda_08_Attachment_B_Clarification_MC_20090325_APPROVED.pdf> (presentation describing the NYISO's proposed tariff revisions).

²⁵ See discussion of these previous Commission decisions *supra* at footnote 9.

made in the course of extensive revisions to the NYISO's tariffs in connection with the implementation of the Real-Time System ("RTS") market enhancements in February, 2005. The software, on the other hand, treats these units as it treats all other flexible resources, under processes established for RTS, and in the manner that best promotes efficient real-time pricing.

The requested waiver is of limited scope and terminates when the amendments that are currently under review are ultimately added to the tariff. Now that the Management Committee has approved the tariff amendments, they are expected to be considered by the NYISO's Board of Directors in April. The NYISO anticipates filing amendments to correct Attachment B as soon as reasonably practicable thereafter.

The NYISO and its stakeholders are pursuing the prospective remedy -- to conform the tariff to the code. The Commission's action on this waiver will resolve the discrepancy described above for the period from February 2005, when the existing Attachment B language went into effect, to the proposed tariff amendment's effective date.

The waiver will not have undesirable consequences. The process for establishing real-time prices will not change because the software has been treating flexible units that are scheduled to provide Regulation Service appropriately in order to establish efficient real-time energy and Regulation Service clearing prices. Settlements for flexible units that provide Regulation Service will not change under the proposed tariff amendments either, as the software has been treating these units, appropriately, as flexible units. No stakeholder could have a legitimate interest in enforcing the erroneous language in Attachment B and requiring the NYISO to calculate real-time prices in a less efficient

manner that contravenes its market design.

In light of the inconsistent tariff directions with regard to this issue and the ongoing effort by the NYISO and its stakeholders to correct the non-conforming tariff provisions, the NYISO respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the Attachment B provision that currently requires units scheduled to provide Regulation Service to be excluded from the real-time price setting process.

C. EFORd Calculation Error

1. Notification of Implementation Error

The Services Tariff requires that EFORd values be calculated in accordance with ISO Procedures.²⁶ In the ordinary course of calculating the EFORd rate for units prior to the beginning of the 2009 Summer Capability Period, the NYISO discovered that beginning with the 2004-05 Winter Capability Period it had used the incorrect formula when computing the EFORd for two generating units. The formula the NYISO had been using is applicable to other types of generators, but not to the two generators in question. Had the correct formula been applied, a higher EFORd value for each of the units would have resulted from the computation. Those higher EFORd values, when applied in calculating each unit's UCAP value, would have resulted in lower UCAP values for both units. The NYISO's staff determined on or about March 12, 2009 that the error had been made and reported it to NYISO Market Participants on March 19, 2009.²⁷ The NYISO staff reported the matter to the Office of Enforcement on March 16, 2009.

²⁶ See Services Tariff Section 5.16(a).

²⁷ See < http://www.nyiso.com/public/webdocs/committees/bic_icapwg/meeting_materials/2009-03-19/EOFRd_Tariff_Issue_and_Action_Plan.pdf>.

2. Request for Waiver

The NYISO respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the Services Tariff provisions regarding the settlement of the capacity market for the relevant time period with respect to the EFORd calculation errors. The NYISO submits that this issue warrants a waiver under the Commission precedent described above.

The underlying error was made in good faith. The NYISO utilizes different formulas for different types of generators, consistent with its Installed Capacity Manual. The formula it applied was a formula the NYISO uses for a different type of generator. It utilized the same incorrect formula for each of the Capability Periods since Winter 2004-2005.

The requested waiver is limited in scope. The incorrect formula was applied to two generators. The Unforced Capacity ("UCAP") value assigned to each of the units was greater than the UCAP value that would have resulted had the correct formula been applied to calculate each unit's EFORd rate. The NYISO has reviewed the aggregated monthly amounts sold by the two units for all Capability Periods from the Winter 2004-05 Period through the 2008-2009 Winter Period and found that they sold a total of 37.4 MW of UCAP more than they would have had their EFORd values been properly computed. The NYISO correctly computed the EFORd rate for these two units for the Summer 2009 Capability Period and has taken measures to ensure that the correct formula is applied in future periods.

The waiver will not have undesirable consequences. Neither the Market Participant that is the NYISO customer for these units, nor any other Market Participant,

will be harmed by the application of the correct formula in the future. As to the impact on prior Capability Periods, it is not possible to determine the exact monetary value of the 37.4 MW because it is not possible to know how the Market Participant would have participated in the capacity markets had it been aware of the correct EFORd values for the two units, and the correct UCAP value that would have resulted from the application thereof.

Using a proxy of the ICAP Spot Market Auction clearing prices to estimate the error's possible impact, indicates that the overpayment would total approximately \$310,000 for the entire period. Since the capacity at issue is located in Load Zone K (*i.e.*, Long Island), most of the cost of the overpayment was presumably borne there. However, because Long Island capacity can be, and in some instances was, used to meet NYCA load requirements, it would be difficult to determine the portion of the estimated amount of the overpayment that was borne by Long Island Loads and how much of the overpayment was borne by Rest of State Loads.

The quantity of UCAP oversold also would have affected the clearing price on the NYISO's Installed Capacity demand curve; however, the monthly amount oversold ranged from zero (0) MW to 2.9 MW. This range of low amounts of MW oversold each month, coupled with the impossibility of predicting the Market Participant's behavior had it known the correct UCAP quantity, compound the difficulty of accurately determining the effect on the market or the amount of the overpayment.

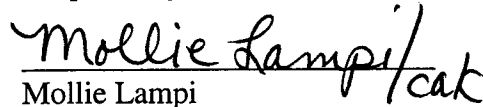
Consequently, the potential harm to third parties is relatively small and is outweighed by both the difficulty of identifying and implementing an accurate correction and the uncertainty that a retroactive adjustment would create. The Commission should

therefore grant the NYISO's requested waiver.

III. Conclusion

For all of the reasons set forth above the NYISO respectfully requests that the Commission grant the tariff waivers sought herein²⁸ and take any other actions or grant any other relief that it deems necessary.

Respectfully submitted,

Handwritten signature of Mollie Lampi in cursive script, appearing as 'Mollie Lampi/cak'.

Mollie Lampi

New York Independent System Operator, Inc.

²⁸ Including a waiver of Attachment J to the OATT to the extent that it parallels Attachment B of the Services Tariff. *See supra* n. 19.