

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

New York Independent System Operator, Inc.            )            Docket No. \_\_\_\_\_

**REPORT 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 (i) to report on certain errors that it has determined were made in the implementation of changes to the Market Mitigation Measures (“MMM”), Attachment H to its Market Administration and Control Area Services Tariff (“Services Tariff”); (ii) to report on the steps being undertaken to remedy these errors and prevent their recurrence; and (iii) to request tariff waivers as may be necessary to preclude retroactive mitigation of market clearing prices.<sup>1</sup>

When the NYISO’s senior management learned of the matters reported in this filing, its first priority was to initiate steps to achieve full compliance with its tariff through the necessary corrections to its system software. As set forth below, the first phase of the necessary fixes is being implemented concurrently with this filing, with the other phases to follow as quickly as practicable. The NYISO is conducting a thorough review of the causes of the reported problems, and the procedural and administrative changes necessary to preclude their recurrence. The NYISO expects to complete this review, and to report to the Commission and the New York Market Participants, on the remedial steps it has taken or will take, in the first quarter of 2006.

This filing does not request any changes to the NYISO’s tariffs, and does not propose any retroactive changes to market clearing prices. To the contrary, it asks the Commission to

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<sup>1</sup> Unless otherwise specified, capitalized terms used in this filing have the meanings specified in the Services Tariff.

confirm the application to the reported matters of its policy in favor of price certainty and against retroactive changes in market clearing prices by the application of market mitigation measures. As discussed below, certain payments between load and supply will be corrected as part of the NYISO settlement process, and the NYISO will discuss those settlements directly with the affected Market Participants.

### **I. Copies of Correspondence**

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### **II. Background**

Under the Services Tariff, generators submit three-part bids into the Real-Time Market, that is, bids for Energy, Minimum Generation, and Start-up. The marginal Energy bid sets the market-clearing price (LBMP) for Energy. All three bids are used to commit units and determine whether they should receive a Bid Production Cost Guarantee payment (“BPCG”) for a given operating day. A BPCG is paid if a unit’s total as-bid costs are greater than its revenues for an operating day. While LBMP prices are established by the market clearing price for a given geographic market area, BPCGs are necessarily determined on a unit-by-unit basis. Moreover, the level of a unit’s BPCG cannot be determined until the results of a full day’s operations are

available, since only then can the unit's revenues be determined. As a result, BPCGs are ultimately determined in the billing and settlement process for each unit, and only affect that unit. By contrast, Energy clearing prices, or LBMPs, are determined interval by interval through the market day, are paid to all units selected for Energy, and once determined cannot be changed without disrupting the settled expectations of all entities participating in the Energy market. The Commission has determined that, as specified in § 4.2.2(d) of the MMM: "The ISO shall not use a default bid to determine revised market clearing prices for periods prior to the imposition of the default bid, except as may be specifically authorized by the Commission."<sup>2</sup>

The NYISO senior management has recently learned that certain aspects of the implementation of the NYISO's market mitigation measures did not conform to applicable tariff requirements as they have changed from time to time. For the most part, these implementation errors affected BPCG compensation of certain units in the New York City zone, which has been designated as a Constrained Area for market mitigation purposes. The NYISO is in the process of correcting the compensation to the affected generators, which will bring the NYISO into compliance with its tariff prior to the final billing settlements with the affected units. As described below, however, the mitigation errors also affected LBMPs in certain limited instances. Although the precise effects would be difficult if not impossible to quantify because of the difficulties and uncertainties inherent in attempting to redetermine market-clearing prices retroactively, for the reasons discussed below the NYISO believes any effects would be relatively small, and would not warrant departure from the Commission's policy against the retroactive application of market mitigation measures to change market clearing prices.

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<sup>2</sup> Services Tariff Attachment H, § 4.2.2(d).

Accordingly, the NYISO requests that the Commission confirm the application of § 4.2.2(d) of the MMM to the situations described below, and otherwise waive the application of any contrary requirements of the Services Tariff during the specified periods so as not to require any retroactive changes to market clearing prices.

### **III. Mitigation Errors**

#### **A. Continuation of the “Proxy Impact Test” in the Period from May 1, 2004 to January 31, 2005**

The NYISO’s November 26, 2003, filing to implement its new Real Time Scheduling (“RTS”) software proposed several improvements to the MMM.<sup>3</sup> These included a number of refinements to mitigation in the Day-Ahead Market (“DAM”), as well as replacing the “proxy impact test” for the Real-Time in-City automated mitigation procedures (“AMP”) originally implemented as part of the NYISO’s March 20, 2002 Comprehensive Mitigation Measures (“CMM”) filing.<sup>4</sup> Because of software limitations when the CMM was first implemented, § 3.2.1(3) of the MMM specified a “proxy impact test” for the Real-Time in-City AMP. The “proxy impact test” was based on the scheduling status of the relevant unit, or the relationship between its reference level and the offer price of the marginal unit, with the exception of situations in which the difference in prices between the unit’s load pocket or pockets and

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<sup>3</sup> The RTS effects close integration of the Real Time Commitment and Real Time Scheduling, with the latter occurring in five minute increments, among other important, efficiency-enhancing changes.

<sup>4</sup> *New York Independent System Operator, Inc.*, Compliance Filing of the New York Independent System Operator, Inc. Regarding Comprehensive Market Mitigation Measures and Request for Interim Extension of Existing Automated Mitigation Procedure, Docket Nos. ER01-3155-002, ER01-1385-070, EL01-45-009 (Mar. 20, 2002). The CMM was approved by the Commission with effect from June 1, 2002. *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 at 62,054 (2002).

surrounding areas would not be sufficient to warrant mitigation. Specifically, the MMM specified that the initial, or “proxy,” impact test for Energy and Minimum Generation bids would be:

Initially, the thresholds to be used by the NYISO to determine a material price effect or change in guarantee payments shall be:

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(3) for a Constrained Area generating unit subject to a conduct threshold specified in § 3.1.2.b(1) or § 3.1.2.b(2) in the Real-Time Market, (i) the scheduling of such unit in the prior SCD interval, or (ii) if the unit is not scheduled, a determination that the reference level for such unit is less than the offer price of the marginal resource by more than the amount of the applicable conduct threshold; provided, however, that mitigation measures shall not be imposed if the sum of the shadow prices on any transmission interface into or in the Constrained Area leading to the area in which such unit is located is less than the dollar amount of the applicable conduct threshold.

The NYISO’s March 12, 2004 RTS Compliance Filing<sup>5</sup> purported to implement the full impact test, which would change the above language to read:

for a Constrained Area Generator subject to either a Real-Time Market or Day-Ahead Market conduct threshold, as specified above in §§ 3.1.2(b)(1) or 3.1.2(b)(3): for all Constrained Hours (as defined in those subsections) for the unit being bid, a threshold determined in accordance with the formula specified in § 3.1.2(b)(1) or (3) respectively above.

The foregoing tariff change was circulated for vetting among the persons responsible for implementing the MMM improvements in parallel with the original RTS upgrade. The effective date of the RTS market changes was contingent on the development and testing of the necessary software. The full RTS software ultimately was not ready for implementation until February 1, 2005. The March 12, 2004 RTS Compliance Filing accordingly apprised the Commission of this

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<sup>5</sup> *New York Independent System Operator, Inc.*, Compliance Filing and Notice of Implementation of the New York Independent System Operator, Inc., Docket No. ER04-230-003 (March 12, 2004).

schedule, but sought approval for, among other things, implementation of several modifications to its MMM in advance of full RTS deployment. The filing requesting implementation of certain MMM revisions was approved by the Commission with an effective date of May 1, 2004.<sup>6</sup>

The mitigation changes implemented on May 1, 2004 included the use of automated conduct-and-impact mitigation under the CMM for the in-City DAM in place of the then-applicable measures, which were imposed at the request of Consolidated Edison Co. of New York (“ConEd”) prior to the formation of the NYISO. The ConEd mitigation measures were triggered when the interfaces into the City were binding, which was determined by comparing in-City prices with prices at the Indian Point 2 bus north of the City.

While the NYISO had intended to implement these significant improvements to the DAM mitigation measures, it had not intended to replace the “proxy impact test” with the full impact test in the Real-Time Market until the RTS software was implemented. Regrettably, the submission of the foregoing language to implement the full Energy bid impact test in the Real-Time Market was not specifically linked to the real-time software implementation in the NYISO’s internal tariff filing review process. As a result, notwithstanding the implicit representations in the March 12, 2004 RTS Compliance Filing, the previously-approved “proxy impact test” for the Real-Time in-City AMP could not be replaced until the RTS software went into operation on February 1, 2005. The NYISO therefore continued to use the “proxy impact test” for LBMP impact in the Real-Time Market from May 1, 2004 through January 31, 2005.

The “proxy impact test” was adopted in the CMM with the advice of the NYISO’s independent Market Advisor, Dr. David B. Patton, as the closest practical proxy for the full

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<sup>6</sup> *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 9 (2004).

impact test. As can be seen in the language set forth above, it included a proviso to ensure that mitigation was not imposed when it was not warranted. Although the two tests are not identical, the results of the proxy impact test should closely match the results of the full impact test. Given the similarity of the results of the two impact tests, the NYISO, in consultation with Dr. Patton, does not believe that the Real-Time LBMPs during the relevant period were sufficiently affected to warrant re-determining market-clearing prices for all Real-Time intervals from May 1, 2004 to January 31, 2005 by retroactively applying the full impact test and incurring the associated disruption to settled expectations. In addition, retroactive application of the full impact test may not be possible. The NYISO is informed by its Market Monitoring and Performance Unit (“MMP”) and its independent Market Advisor that it would be all but impossible, if indeed not impossible, and at a minimum enormously burdensome, accurately to re-run every Real-Time interval between May 1, 2004 and January 31, 2005 with the full impact test as opposed to the proxy impact test.

**B. Continuation of Certain ConEd SRE/OOM Measures in the Period from June 1, 2002 to January 31, 2005**

The March 20, 2002 CMM filing, among other things, superseded certain Real-Time Market mitigation measures that had been implemented in New York City at the request of ConEd<sup>7</sup> with the NYISO’s “conduct and impact” approach to mitigation. This integration was intended to include replacement of the ConEd measures for Real-Time mitigation of all three bid

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<sup>7</sup> See Docket Nos. ER01-1385, ER98-3169 and EL01-45.

components (Energy, Minimum Generation and Start-up) of in-City Supplemental Resource Evaluation (“SRE”) and Out-of-Merit (“OOM”) units.<sup>8</sup>

SRE procedures are invoked to commit eligible units after the Day-Ahead dispatch has been determined to ensure that enough capacity is available whenever unanticipated system conditions occur that could affect system reliability such as a loss of transmission or significant generation, or to address other reliability issues. Because SRE units would not otherwise be deemed economic, SRE units are ordinarily committed at Minimum Generation levels. Similarly, since OOM units are brought on in addition to or to replace units dispatched in economic merit order to maintain reliable operations, they may operate for relatively short periods. Because SRE and OOM units are committed outside the normal economic evaluation, they may require a BPCG in order to be made whole to their as-bid costs, with a consequent potential for mitigation of the unit’s Start-up and Minimum Generation bids.

Under Attachment H to the Services Tariff, in order to apply conduct-and-impact mitigation to Start-up and Minimum Generation bids, it is necessary to determine whether those bids had the requisite impact on the BPCG for that unit, by calculating BPCG payments using mitigated and unmitigated bids and comparing the results of the two calculations.<sup>9</sup> Developing the software to perform these calculations for the Real-Time Market has, however, proved intractably difficult, because of the need to make a complete billing determination on an interval-

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<sup>8</sup> SRE units are called upon in economic merit order to supplement the original system dispatch, which may be inadequate to meet Load and/or reliability requirements due to changed conditions. Services Tariff § 2.176. OOM units operate at different levels from units that are “dispatched to meet Load which was not security constrained,” and they are called upon to “maintain system reliability or to provide Ancillary Services.” Services Tariff § 2.135a.

<sup>9</sup> MMM, Services Tariff Attachment H § 3.2.



by-interval basis for a unit before and after mitigation. Such software was not available when the CMM went into effect in June of 2002.

The inherent difficulty of applying impact tests was anticipated by § 3.2.2(b) of the MMM, which states: “Pending development of the capability to use automated market models, the Market Monitoring Unit, in consultation with the Market Advisor, shall determine the effect on prices or guarantee payments of questioned conduct using the best available data and such models and methods as they shall deem appropriate.” Instead of applying Real-Time conduct-and-impact mitigation to in-City SRE and OOM units by the best means available as contemplated by § 3.2.2(b), however, the ConEd Real-Time mitigation measures for in-City SRE and OOM units were used instead. The ConEd measures automatically replaced the bids of an in-City SRE or OOM unit with reference bids, without testing conduct or impact against the specified thresholds. As a result, the ConEd measures would generally apply mitigation more often than would conduct-and-impact mitigation under the CMM. As discussed below, the ConEd mitigation measures for in-City units committed via SRE or OOM procedures remained in place until January 31, 2005.

As indicated above, the principal mitigation concern with SRE and OOM units is the level of BPCG payments resulting from the netting of Energy, Start-up and Minimum Generation bids against a unit’s operating revenues. Accordingly, the NYISO is in the process of determining corrected, revised BPCG payments for SRE/OOM units that were subjected to the ConEd mitigation measures. The correction will calculate BPCGs based on the units’ original bids, if and to the extent that the units would not have been subject to conduct-and-impact mitigation during the relevant period.

The NYISO is able to determine the conduct-and-impact mitigation levels for the affected SRE and OOM units because the automatic application of default bids to those units by definition provides the post-mitigation calculation, for comparison to each generator's as-bid costs. In making these corrections, the NYISO determined that in some instances, default bids were applied to the first hour of operation of an appropriately mitigated OOM unit, but not to subsequent hours that also should have been mitigated, resulting in undermitigation during such periods. The net effect of the BPCG corrections is a refund to the affected in-City generators of \$2.5 million for the June 1, 2002 to April 30, 2004 period. These calculations have been reviewed and verified by the NYISO's independent Market Advisor. The corrections for the period May 2004 through January 31, 2005 are still under review.

Thus, the consequences of using the ConEd mitigation measures on BPCG payments can be corrected and brought into compliance with the Services Tariff. The application of the ConEd measures could, however, have affected market-clearing prices under certain limited circumstances, since the ConEd measures automatically replaced Energy as well as Start-up and Minimum Generation bids with default bids for OOM units. Most of the in-City OOM units are gas turbines that may on occasion have set prices at the level of their mitigated energy offer. This concern does not apply to SRE units, the Energy bids of which were subject to appropriate conduct-and-impact mitigation.

LBMPs would only have been affected if the OOM unit in question (a) would have been dispatched for Energy, (b) was eligible to set price, (c) would not have been subject to mitigation under the MMM, and (d) its incremental Energy bid would have made it the marginal unit. In most cases, OOM units were operated for Energy only for limited periods. It is also the case that the units at issue are all located in the New York City zone, which has been designated as a

Constrained Area under the MMM.<sup>10</sup> As a Constrained Area, the City is subject to relatively low “load pocket” mitigation thresholds, generally in the range of \$3 to \$10, because of the sustained congestion conditions. Any impact on LBMPs above these relatively low thresholds would have been appropriately mitigated under the MMM. Thus, the potential effects on LBMPs of the NYISO’s continuation of the ConEd measures, as compared to the use of the appropriate MMM thresholds in the Real-Time Market, would be confined to a narrow band of market outcomes bounded at the top by the Constrained Area thresholds.

Given the limited circumstances under which LBMPs could have been affected, the relatively minor potential price impacts, and the very difficult if not virtually impossible task of retroactively recalculating market clearing prices, the NYISO concludes that settled market expectations should not be disturbed by attempting to retroactively re-clear Energy market-clearing prices in the relevant Real-Time Markets.

### **C. Discontinuation of In-City OOM Mitigation on February 1, 2005**

On February 1, 2005, the RTS improvements to the Real-Time Market were put in place. In conjunction with the RTS implementation, the application of the ConEd SRE/OOM mitigation measures was discontinued as not compliant with the Services Tariff, but the software required to perform the Real-Time BPCG impact test had not been developed. Accordingly, the MMP undertook to monitor in-City SRE and OOM, as well as other units that might earn BPCG payments, on a manual “best efforts” basis, in accordance with § 3.2.2(b) of the MMM, with the expectation that BPCG impact test software will be developed in the near future and that BPCG payments can be computed and corrected in the billing and settlement process on a unit-by-unit

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<sup>10</sup> Services Tariff Attachment H § 2.1.

basis. The NYISO expects that software development requirements for calculating Real-Time BPCG impacts, and a schedule for implementing the software, can be developed during the first quarter of 2006, with BPCG payments redetermined prior to the final billing and settlement process for period from February 2005 forward. At that time, barring unexpected software or data problems, BPCG mitigation will be brought into compliance with the tariff.

In addition to these BPCG issues, however, the NYISO has determined that the RTS software did not apply Real-Time conduct-and-impact LBMP mitigation to the Energy bids of in-City OOM units. Thus, the deactivation of the ConEd measures resulted in LBMP mitigation measures not being applied to the Energy bids of OOM units. If the ConEd measures had been continued, however, potentially incorrectly mitigated bids would have been applied, as in the period prior to February 1, 2005.

When the NYISO senior management learned of the foregoing mitigation compliance issues, it directed that software fixes be implemented as soon as possible to ensure that OOM units are appropriately included in LBMP mitigation. In order to implement fixes as soon as they are available, the software corrections are being developed and implemented in phases. “Phase I” of the software corrections was implemented on November 8, 2005, concurrent with this filing. In Phase I, the Real-Time Energy bids of OOM units are being made subject to conduct-and-impact LBMP mitigation at the same thresholds that apply to other units in New York City.

With the Phase I fix, the RTS software mitigates Energy bids from SRE and OOM units at the conduct thresholds applicable to other in-City units. Under the MMM, however, SRE and OOM units are to be subject to somewhat more stringent conduct thresholds than other units, in recognition of the fact that designation as an SRE or OOM unit is a form of temporary must-run

status. In-City units in general are subject to lower Load Pocket Thresholds (“LPTs”) for conduct, determined in accordance with a formula in the MMM, in intervals in which any of the transmission interfaces leading to the location of the unit in question is constrained.<sup>11</sup> If transmission to the location of the unit is not constrained, the conduct thresholds used throughout the State are applicable. Under the MMM, however, in-City SRE and OOM units should be subject to an LPT threshold in all hours, not just constrained hours.

Phase II of the software fix will ensure that in-City SRE or OOM generators are always subject to an LPT conduct threshold, including during periods when there are no active transmission constraints. The NYISO expects to have Phase II in place by May 2006. In the meantime, the NYISO has been advised by its independent Market Advisor that not using an LPT threshold in all intervals for SRE and OOM units would be likely to affect a very small portion of intervals. In particular, higher thresholds would only apply in unconstrained intervals. Since June, less than four percent of intervals have been unconstrained *and* had OOM or SRE units running. Furthermore, mitigation in these intervals would rarely be warranted, even at the LPT thresholds, because these units would face competition from the rest of the resources in the State. Thus, mitigation of SRE and OOM units at the LPT thresholds in congested hours is likely to satisfy 98% to 99% of the mitigation requirements. The remaining 1-2% will be covered when Phase II is implemented.

A similarly small potential gap in the NYISO’s software has also been uncovered with respect to the mitigation conduct threshold that applies during Thunderstorm Alerts (“TSAs”). The MMM specifies that a LPT conduct threshold is to be applied to all in-City units whenever a

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<sup>11</sup> Services Tariff Attachment H § 3.1.2.

TSA is in effect. (The lower LPT threshold is appropriate because of the must-run conditions arising from a TSA.) The initial RTS coding, however does not recognize this additional requirement for the use of the LPTs. Again, the adverse effects of this discrepancy are likely to be very small, as TSA conditions warranting mitigation are very likely to be associated with transmission constraints. NYISO's Market Advisor has determined that only 1.5% of the intervals during the period from February 1 through August 31 were subject to a TSA and were unconstrained, and thus should have been subject to the lower conduct thresholds. The correct TSA conduct thresholds will be applied by the Phase II software fix. The Phase II fix is expected to be in place before the beginning of next year's thunderstorm season in June.

To the best of the NYISO's knowledge the Market Participants have not identified or taken advantage of these gaps in the in-City mitigation measures, and the MMP has not observed abnormal pricing levels for in-City Energy that can be linked to bidding by SRE or OOM units. Thus, the NYISO believes that the resulting disruption and expense would not warrant trying to redetermine Real-Time market clearing prices for intervals between February 1, 2005 and November 8, 2005 to detect intervals that might have been changed by mitigation of an OOM Energy bid, or the application of LPT thresholds to SRE or OOM units in unconstrained hours. Moreover, it is not clear that such determinations are feasible.

#### **D. Error in Constraint Identification Affecting In-City LPTs for the DAM in the Period from February 1 through November 8, 2005**

In early September, 2005, in the course of its monthly updating of the DAM LPT calculations in accordance with the formula specified in the MMM,<sup>12</sup> the MMP discovered that effective with the implementation of the RTS on February 1, 2005, changes to the identification

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<sup>12</sup> Services Tariff Attachment H § 3.1.2(b)(1).

of constraints generated by the software for the in-City DAM had been made. The changes resulted in the shadow price costs associated with the constraints not being included in the DAM LPT calculations, as LPTs were calculated on the basis of the constraints as they had been identified prior to February 1, 2005.<sup>13</sup> This change in the identification of constraints was not apparent until September because the LPT calculation is done on a rolling 12 month average figure. When MMP first noticed that something was amiss, they froze the LPT thresholds at the August values, thus capping the impact of this error. The error affected only the in-City DAM and not the Real-Time Market.

The MMP has evaluated the effects of the change in constraint identification on the level of mitigation in the DAM in an effort to assess the potential magnitude of the error. The MMP evaluated the 1464 total hours in August and September. Of those hours, 34 hours that did not have any units mitigated would have had units mitigated with the revised LPTs. In addition, 58 hours that had units mitigated would have had more units mitigated with the revised LPTs. The remaining 1372 hours, or 93% of the total, did not show any change in mitigation with the revised LPTs. Thus, 6.3% of the hours in August and September would have been affected by the LPT revisions.

The foregoing analysis of the constraint identification error does not provide the total dollar impact of corrected LPTs during the relevant period, a full determination of which would require complete recalculation of DAM outcomes for the period since February 1, 2005. Given the magnitudes described above, however, the NYISO does not believe that the impact is likely

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<sup>13</sup> The Services Tariff, Attachment H § 3.1.2(b)(1), specifies that LPTs are to be calculated with respect to “intervals in which an interface into the area in which a Generator is located has a Shadow Price greater than zero . . . .” As a practical matter, the calculations are actually made at a triggering threshold of \$0.02.

to be sufficient to warrant the disruption of settled expectations from retroactive application of mitigation to the DAM during the relevant period.

#### **IV. Other Mitigation Issues**

Start-up conduct threshold. In the implementation of the RTS-related MMM changes in May 2004, the MMM was reasonably interpreted to apply a 50% conduct test to the Start-up bids of in-City units that were started during a constrained hour, with the state-wide conduct test of 200% applied to the Start-up bids of in-City units started in unconstrained hours. Upon further consideration, and in consultation with the Market Advisor, the NYISO believes that it may be more appropriate to interpret the MMM to apply the 50% Start-up conduct test to in-City units whenever started. The fact that a unit was started in an hour that happened to be unconstrained may not be indicative of the likely constraint conditions during the period for which the unit was started. Before making any changes to the current software implementation, however, the NYISO intends to consult with the Market Participants about the appropriate conduct thresholds under the tariff for the Start-up bids of in-City units.

#### **V. Tariff Waivers**

For the reasons set forth above, the NYISO requests that the Commission confirm the application of § 4.2.2(d) of the MMM to bar any redetermination of LBMPs in connection with the mitigation errors described above, and to waive any other provisions of the Services Tariff if and to the extent they could be interpreted to require retroactive redetermination of LBMPs in the situations described above. For the reasons discussed above, this action is requested specifically for:



(i) Application of the “proxy impact test” to Real-Time in-City LBMPs during the period from May 1, 2004 through January 31, 2005.

(ii) Any difference in in-City Real-Time LBMPs that might have resulted from the difference between the application of the ConEd mitigation measures and the MMM to in-City OOM units in the period from June 1, 2002 through January 31, 2005.

(iii) Any undermitigation of in-City Real-Time LBMPs that may have resulted from not applying conduct-and-impact LBMP mitigation to OOM Energy bids in the period from February 1, 2005 to November 8, 2005.

(iv) Any undermitigation of in-City Real-Time LBMPs that may have resulted from or will result from not applying the LPT conduct test to in-City SRE or OOM units and TSA units in unconstrained hours, until the completion of the Phase II software implementation, scheduled for May 2006.

(v) Any undermitigation of in-City DAM LBMP’s that may have resulted from the change in the constraint identification related to in-City constraints from February 1, 2005 through November 8, 2005.

The Commission’s evaluation of whether it should permit tariff waivers in order to help alleviate the effects on an error has focused on several key points, including whether: (1) the underlying error was made in good faith; (2) the waiver is of a limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.<sup>14</sup>

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<sup>14</sup> See, e.g., *Wisvest-Connecticut*, 101 FERC at 62,551 (observing that error was “an inadvertent mishap”); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (continued...)

All of these factors are present in this case. As explained above, the underlying errors are related to difficulties or delays in developing and implementing complex software, and brought no pecuniary or other benefit to the NYISO. Moreover, once the NYISO senior management discovered the errors, it moved to remedy the problems in an expeditious manner, including informing the Commission and its staff. It also informed the stakeholders of the problems and their potential effects, once it could do so without encouraging the exploitation of gaps in the NYISO's mitigation coverage. Further, the waiver requested herein is of a limited scope. The NYISO is seeking a one-time waiver of the tariff provisions described above and is not seeking a continuing waiver once the errors are resolved. The NYISO intends and expects to be in full compliance with its tariff. Third, as discussed above, concrete problems exist and need to be remedied. Finally, the requested waiver is consistent with the Commission's policy against retroactive changes in market clearing prices as the result of the application of market mitigation measures.<sup>15</sup> The requested waivers will prevent harm to Market Participants by preventing the disruption of settled expectations about historic market clearing prices. Correspondingly, the negative effects of retroactively changing market clearing prices may well outweigh any benefits of the corrections.

## **VI. Corrective Actions**

Since learning of the problems described above, the NYISO senior management has overseen a series of priority measures to ensure that the NYISO is in full compliance with its

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(2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996).

<sup>15</sup> See *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,217, at 62,055 (2000) (holding that: "We do not intend for mitigation to entail any retroactive recalculation of market-clearing prices.").

tariff, and that any errors in BPCG payments are corrected. Ensuring tariff compliance has been senior management's first priority. The NYISO has also initiated informal consultations with the Commission's staff to apprise it of the mitigation problems, and the NYISO's intent not to disclose the gap in OOM Energy mitigation until the Phase I fix was installed to close the gap. In addition to the phased software fixes described above, senior management is conducting an extensive examination of the facts and circumstances giving rise to the reported problems. The NYISO will be implementing such further administrative and procedural changes as may be necessary to prevent any further occurrence of these types of errors. The NYISO expects to have completed its reviews and evaluations, and to report the results and its remedial actions, to the Commission, in the first quarter of 2006.

## **VII. Statement of Issues**

This filing presents the issues whether the Commission should, under the facts and circumstances described in § III above:

- Confirm the application of § 4.2.2(d) of the MMM, and its policy in favor of price certainty and against retroactive application of market mitigation measures to change market clearing prices, to bar any redetermination of LBMPs in connection with the mitigation errors described in § III; and
- Waive any other provisions of the Services Tariff if and to the extent they could be interpreted to require retroactive mitigation of LBMPs, as specified in § V above.

As authorities for this action, the NYISO relies on *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,217 at 62,055 (2000) (Commission policy against retroactive

mitigation), as well as, for the Commission’s tariff waiver authority, *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); and *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996). The NYISO further relies on the analysis of these authorities set forth in § V.

### **VIII. Service**

The NYISO is electronically serving a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, the complete filing has been posted on the NYISO’s website at

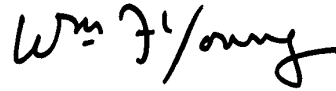
www.nyiso.com. The NYISO will also make a paper copy available to any interested party that requests one.

**IX. Conclusion**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission take the action requested herein.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.



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