

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

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

**NOTIFICATION OF TARIFF IMPLEMENTATION ERROR  
AND REQUEST FOR A LIMITED TARIFF WAIVER OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. (“NYISO”) submits this filing (i) to formally notify the Federal Energy Regulatory Commission (“Commission”) of an error in the implementation of the NYISO’s settlement software related to Sections 6.2 and 6.3 of Rate Schedule 3 of its Market Administration and Control Area Services Tariff (“Services Tariff”) regarding the calculation of certain payments and charges to customers providing Regulation Service in the New York Control Area (“NYCA”); (ii) to inform the Commission of the steps that the NYISO has taken to resolve this error; and (iii) to request a limited waiver, to the extent necessary, from the application of Services Tariff, Rate Schedule 3, Sections 6.2 and 6.3 to customer invoices for the twenty-six affected service months for which the NYISO has previously issued finalized customer invoices in accordance with the billing provisions of its tariffs.

The NYISO recently discovered that its settlement software did not appropriately account for the Regulation Revenue Adjustment payments and charges (“RRA”) established in Services Tariff, Rate Schedule 3, Sections 6.2 and 6.3. RRA was developed to ensure that customers that provide Regulation Service in the NYCA are properly compensated for the Energy that they produce, so that such customers do not have an economic incentive to fail to supply needed

Regulation Service.<sup>1</sup> The NYISO estimates that the financial impact arising from the software discrepancy was approximately \$11,000 for each of the twenty-six affected service months.<sup>2</sup>

Upon confirming the discrepancy, the NYISO informed its Market Participants and Commission staff of the error. The NYISO promptly developed a process to calculate RRA consistent with the RRA provisions in the NYISO tariffs for all then open customer invoices and all future invoices.

Prior to the discovery of the error and the implementation of a corrected process, the NYISO had issued finalized customer invoices in accordance with the billing provisions of its tariffs for twenty-six service months in which RRA was not correctly calculated. The NYISO is not permitted by its tariffs to adjust these finalized customer invoices, absent an order from the Commission or a court of competent jurisdiction.<sup>3</sup> In light of this tariff requirement and the limited financial impact of this error, the NYISO respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the tariff provisions regarding RRA for the twenty-six service months for which the NYISO has already issued finalized customer invoices. The adjustment of each Market Participant's invoice for twenty-six service months to correct such a small error would be detrimental to the financial certainty and finality of prior settlements upon which Market Participants rely.

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<sup>1</sup> Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO Services Tariff and Open Access Transmission Tariff.

<sup>2</sup> This estimate is based upon the RRA amounts for the October 2006, November 2006, July 2007, and August 2007 service months, which the NYISO has calculated consistent with the RRA provisions in the NYISO tariffs.

<sup>3</sup> Services Tariff § 7.4.

## I. Copies of Correspondence

Copies of correspondence concerning this filing should be served on:

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## II. Background

Regulation Service is one of six Ancillary Services products offered by the NYISO that support the transmission of Energy from generating resources to loads while maintaining the reliable operation of the New York State Power System. Specifically, Regulation Service enables the NYISO to continuously balance the supply of Energy with the constant changes in the demand for Energy in the NYCA. A Generator generally provides Energy in the NYISO-administered markets by producing Energy within a set range consistent with basepoints or real-time schedules that the NYISO transmits every five minutes (“RTD Basepoints”). A Generator that possesses the capability to adjust its Energy output to follow basepoints transmitted by the NYISO every six seconds (Automatic Generating Control Basepoints or “AGC Basepoints”) may bid in the NYISO-administered markets to provide Regulation Service in addition to

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<sup>4</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2006) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

Energy. The NYISO economically schedules eligible Generators for Regulation Service. If scheduled, such a Generator will follow its six second AGC Basepoints to increase or decrease its Energy output rather than its five-minute RTD Basepoints to maintain a balanced generation and load profile for the NYCA.

The NYISO provides a payment to a Generator that is scheduled to provide Regulation Service day-ahead or in real-time based on the Regulation Service market clearing price in the Day-Ahead Market and Real-Time Market for each day-ahead hour or real-time interval multiplied by the amount of Regulation Service that the Generator is scheduled to provide in that day-ahead hour or real-time interval. The NYISO also provides an Energy payment to a Generator that is providing Regulation Service for intervals in which the Generator injects Energy. In such cases, the NYISO, as a general matter, provides the Generator with a payment for Energy that is equal to the lower of its actual generation or its AGC Basepoint.

RRA was developed to ensure that a Generator is properly compensated for the Energy that it produces in providing Regulation Service when the AGC Basepoint is different than the RTD Basepoint. Specifically, RRA is designed so that the NYISO provides a payment or charge to a Generator to ensure that it is economically indifferent between an Energy settlement at the AGC Basepoint or the RTD Basepoint. Such a settlement rule removes any economic incentive that a Generator may have to continue to produce Energy at the RTD Basepoint rather than providing necessary Regulation Service at the AGC Basepoint.

The RRA tariff provisions became effective in February 2005 as part of the deployment of the NYISO's Standard Market Design 2.0, which was a large scale upgrade of the NYISO's electronic infrastructure.<sup>5</sup> However, the corresponding software code was not correctly

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<sup>5</sup> See *Compliance Filing, Notice of Effective Date, and Informational Notice of the New York Independent System Operator, Inc. in Docket No. ER04-230-007*, Docket No. ER04-230-007 (January 28, 2005).

implemented in the NYISO's settlement software. In early 2008, in the course of reviewing tariff provisions and settlement software regarding Demand Side Ancillary Services, the NYISO discovered that the RRA provisions had not been properly implemented in the settlement software. Prior to this discovery, the NYISO had issued finalized customer invoices pursuant to the billing provisions of its tariffs for twenty-two service months in which the RRA had been improperly calculated. Specifically, RRA has not been properly calculated in the customer invoices for the following service months: February 2005 through July 2006 and January 2007 through April 2007.<sup>6</sup> The NYISO estimates that the discrepancy resulted in a small financial impact for each affected service month of approximately \$11,000.

Upon confirming the discrepancy, the NYISO promptly informed its Market Participants and Commission staff of the error and initiated steps to develop a process for calculating RRA consistent with the RRA provisions in Services Tariff, Rate Schedule 3, Sections 6.2 and 6.3. The NYISO recently finalized a corrected process and will calculate RRA consistent with the RRA provisions in the NYISO tariffs in the customer invoices for all service months going forward.

Prior to the implementation of this corrected process, the NYISO employed a manual correction for six service months which were open at the time of the discovery of the software discrepancy and have since been finalized: August 2006 through October 2006 and May 2007 through July 2007. However, the NYISO has since concluded that due to the complications of determining RRA, only customer invoices for the October 2006 and July 2007 service month contain RRA calculated consistent with the RRA provisions in the NYISO tariffs.

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<sup>6</sup> The NYISO recently revised its settlement process to shorten the time periods for the review, correction, challenge, and finalization of customer invoice. The settlement process for customer invoices issued for service months prior to January 1, 2007, lasts approximately twenty-two months. As revised, the settlement process for customer invoices issued for service months on or after January 1, 2007, lasts approximately ten months. For this reason, the NYISO has already issued finalized customer invoices for certain service months in 2007 even though certain customer invoices issued for service months in 2006 are still open.

The NYISO has, therefore, issued finalized customer invoices in accordance with the billing provisions in its tariffs for a total of twenty-six service months in which RRA was not calculated consistent with the NYISO tariffs. As discussed below, the NYISO is not permitted by its tariffs to adjust these finalized customer invoices and requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the RRA tariff provisions for the finalized customer invoices in the affected twenty-six months to ensure the financial certainty of prior settlements.

### **III. Discussion**

The NYISO tariffs establish explicit time periods for the NYISO and its customers to review, challenge, and correct settlement information in a customer invoice for a given service month.<sup>7</sup> At the conclusion of this process, the NYISO is required to issue a finalized customer invoice that cannot be adjusted by any party, including the NYISO, absent an order from the Commission or a court of competent jurisdiction.<sup>8</sup> Pursuant to these tariff requirements, the NYISO has previously issued finalized customer invoices for twenty-six service months affected by the RRA software discrepancy and is not permitted to adjust these invoices. The NYISO respectfully requests, however, that to the extent that the Commission determines that a waiver is necessary to resolve this issue, the Commission grant such a waiver to the NYISO of the RRA tariff provisions in Services Tariff, Rate Schedule 3, Sections 6.2 and 6.3 for the twenty-six service months for which the NYISO issued finalized customer invoices that included RRA that was not calculated consistent with the NYISO tariffs.

The NYISO has previously described to the Commission the vitally important role that the finality of prior customer settlements has on the effective functioning of the NYISO-

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<sup>7</sup> Services Tariff §§ 7.4.1-7.4.2.

<sup>8</sup> Services Tariff § 7.4.

administered markets.<sup>9</sup> The determination to finalize customer invoices within a specific timeframe and to exclude further modifications to the finalized invoices was the product of extensive discussions among the NYISO and its stakeholders. The resulting procedures strike a balance between Market Participants' interest in attaining accurate settlements on the one hand and the financial certainty afforded by finalized invoices that are not subject to continuing revisions on the other.

As recognized by Section 7.4 of the Services Tariff, the Commission may always order such remedy as it determines to be appropriate should a serious error in customer settlements be discovered after the NYISO has issued a finalized customer invoice. The NYISO, however, requests that in considering the facts described herein, the Commission weigh the relatively small financial impact of the error, which amounts to approximately \$286,000 spread over twenty-six service months in a \$9.5 billion annual marketplace, with the detrimental impact that reopening all of its customer invoices for a twenty-six month period would have on the finality of previously issued customer invoices upon which NYISO Market Participants rely.

#### **IV. Request for a Waiver**

The Commission has previously evaluated a number of issues in determining whether to authorize a tariff waiver to alleviate the effects of an error. These include whether: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such

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<sup>9</sup> *New York Independent System Operator, Inc., New York Independent System Operator, Inc.'s Proposed Tariff Revisions Regarding the Review, Challenge, and Correction of Customer Settlement Information*, Docket No. ER06-783-000 at 7 (March 27, 2006) (“Section 7.4.C of the Services Tariff has also been revised to more clearly establish the finality of a Close-Out Settlement by explicitly prohibiting the NYISO from making changes to an invoice after the issuance of a Close-Out Settlement for that month absent Commission or judicial intervention. This clarification will provide certainty regarding the finality of prior settlements that is vitally important to the effective functioning of the NYISO markets.”).

as harming third parties.<sup>10</sup> To the extent that the Commission determines that a waiver is necessary to resolve this issue, the NYISO requests that the Commission consider the following:

The underlying error here was made in good faith. The NYISO included the RRA settlement code as part of the complex, system-wide Standard Market Design 2.0 enhancement. The NYISO was not aware that the RRA settlement code was not implemented correctly. Moreover, once the NYISO discovered the error, it moved to remedy the problems in an expeditious manner, including promptly notifying Market Participants and Commission staff.

The scope of the waiver is limited to a small financial impact of approximately \$11,000 for each of the affected service months. In addition, the NYISO has corrected the process for calculating RRA and will include RRA calculated consistent with the RRA provisions in the NYISO tariffs in all open customer invoices going forward.

Finally, in making this filing, the NYISO seeks to assure Market Participants that have been informed of the error that the NYISO will not seek to resettle their finalized invoices for the affected twenty-six service months.

## V. Service

The NYISO will electronically send a link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the electric utility regulatory agencies of New Jersey and

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<sup>10</sup> See, e.g., *California Independent System Operator Corp.*, 116 FERC ¶ 61,226 at P 8 (2006) (granting limited waiver of tariff provisions governing sanctions for failing to timely submit generator outage and other information in order to allow California ISO to ensure that market participants were not inappropriately penalized); *New York Independent System Operator, Inc.*, 112 FERC ¶ 61,347 at P 7 (2005) (granting the NYISO a discrete tariff waiver in order to recalculate certain charges); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 at P 16 (2003) ("Great Lakes has shown good cause for its Emergency Waiver request and has shown that the impact on non-exempt customers whose supply may be curtailed will be de minimus."); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 at P 5 (2003) ("The Commission finds that in this instance, good cause has been shown to waive TransColorado's Fuel Gas Reimbursement provision in Section 12.9 of its FERC Gas Tariff, First Revised Volume I, as requested."); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 at 61,780 (1996) (granting one-time waiver request). See also *Wisvest-Connecticut LLC v. ISO-New England, Inc.*, 101 FERC ¶ 61,372 at P 24 (2002) (finding that ISO-NE roles requiring assessment of deficiency penalty should not be applied in this case because market participant's error giving rise to the penalty was "an inadvertent mishap.").



Pennsylvania. In addition, the complete filing will be 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. To the extent necessary, the NYISO requests waiver of the requirements of Section 35.2(d) of the Commission's Regulations (18 C.F.R. § 35.2(d) (2006)) to permit it to provide service in this manner.

## **VI. Conclusion**

Wherefore, for all of the above reasons, the NYISO respectfully requests that the Commission grant the NYISO a limited waiver, to the extent necessary, of the RRA tariff provisions for service months in which the NYISO has previously issued finalized customer invoices pursuant to the billing provisions in the NYISO tariffs.

Respectfully submitted,

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