154 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

New York Independent System Operator, Inc. — Docket Nos. ER16-168-000, ER16-168-001

ORDER ACCEPTING PROPOSED TARIFF REVISIONS SUBJECT TO CONDITION

(Issued February 18, 2016)

1. On October 29, 2015, as amended on January 7, 2016, pursuant to section 205 of the Federal Power Act (FPA),[1] the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to the market power mitigation measures set forth in section 23 of its Market Administration and Control Area Services Tariff (Services Tariff). According to NYISO, the proposed revisions will improve coordination between the electric system and natural gas system by giving NYISO authority to prohibit generators from including unauthorized natural gas costs and penalties in reference levels and to reject ex-post requests to recover costs associated with unauthorized natural gas use. In this order, we accept NYISO's filing, subject to condition, effective February 18, 2016, as discussed below.

I. <u>Background</u>

2. The calculation of reference levels based on actual fuel costs is part of NYISO's market power mitigation measures in its existing Services Tariff. Section 23 of NYISO's Services Tariff sets forth the market power mitigation measures that NYISO employs to mitigate the effects of market power.[2] Examples of conduct that warrant mitigation include physical withholding (i.e., "not offering to sell or schedule the output of or

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[1] 16 U.S.C. § 824d (2012).

[2] NYISO, Services Tariff, Attach. H, § 23.1 (0.0.0).

services provided by an Electric Facility capable of serving an ISO Administered Market") and economic withholding (i.e., "submitting Bids for an Electric Facility that are unjustifiably high so that (i) the Electric Facility is not or will not be dispatched or scheduled, or (ii) the Bids will set the market clearing price").[3] If NYISO identifies conduct that warrants mitigation, NYISO imposes a default bid on the Market Party,[4] which establishes a maximum or minimum value, equal to the reference level for that generator (default bid mitigation).[5] The reference level is intended to estimate the generator's marginal costs. Under default bid mitigation, the Market Party is subject to the NYISO-calculated reference level to be eligible to receive the locational based marginal price or any other market clearing price if the default bid clears the market.[6]

3. Physical withholding is determined by comparing: a generator's capability with the amount of that capability bid into the market; and a generator's operation with the level of output that would have been expected if the generator followed NYISO's dispatch instructions.[7] Economic withholding is determined by comparing a generator's NYISO-determined reference level with its bidding behavior. To determine whether a generator is withholding, NYISO calculates a generator's reference level as the lower of the mean or median of the generator's accepted bid or bid components from 6:00 a.m. to 9:00 p.m. in competitive periods over the most recent 90 days for which the necessary data is available, adjusted for changes in fuel prices, and with certain exclusions.[8] If sufficient data is not available, NYISO calculates a generator's reference levels using the mean of the locational based marginal price at the generator's location during the lowest-

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[3] *Id.* § 23.2.4.1 (17.0.0). *See also id.* §§ 23.3.1.1 (Thresholds for Identifying Physical Withholding), 23.3.1.2 (Thresholds for Identifying Economic Withholding) (11.0.0).

[4] "Market Party" is defined in NYISO's Services Tariff as "any person or entity that is, or for purposes of the determinations to be made pursuant to Section 23.4.5.7 of this Attachment H proposes or plans a project that would be, a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing." *Id.* § 23.2.1 (17.0.0).

[5] *Id.* §§ 23.4.1, 23.4.2.2 (35.0.0).

[6] *Id.* § 23.4.2.2.2 (35.0.0).

[7] *Id.* §§ 23.3.1.1.1, 23.3.1.1.2 (11.0.0).

[8] *Id.* § 23.3.1.4.1.1 (11.0.0).

priced 50 percent of the hours the generator was dispatched over the most recent 90 days for which the necessary data is available, adjusted for changes in fuel prices, and with certain exclusions.[9] If neither of those two methods is available, NYISO then calculates a generator's reference level by consulting with the Market Party.[10] Under all three methods, NYISO must "use the best information available to it to adjust reference levels to reflect appropriate fuel costs."[11] NYISO imposes financial penalties on Market Parties that provide NYISO inaccurate fuel type or fuel price information that NYISO uses to develop the generator's reference level, where the inaccurate reference level then impacts guarantee payments or market clearing prices paid to the Market Party more than the defined impact thresholds.[12]

II. NYISO's Filing

4. NYISO proposes Services Tariff revisions that: (1) exclude unauthorized natural gas consumption costs and penalties from reference levels; (2) address NYISO's use of "the best information available to it to adjust reference levels to reflect appropriate fuel costs;"[13] (3) revise NYISO's energy market physical withholding rules; (4) require generators to use the NYISO-specified default bid when subject to mitigation; (5) improve the calculation of penalties for submission of inaccurate fuel cost information; and (6) modify the day-ahead and real-time guarantee payment impact test thresholds that apply to reliability-committed generators located outside of the New York City Constrained Area.[14]

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[9] *Id.* § 23.3.1.4.1.2 (11.0.0).

[10] *Id.* § 23.3.1.4.1.3 (11.0.0).

[11] *Id.* § 23.3.1.4.6 (11.0.0).

[12] *Id.* §§ 23.4.3.2, 23.4.3.3.3 (35.0.0).

[13] *Id.* § 23.3.1.4.6 (11.0.0).

[14] A "Constrained Area" is defined as: "(a) the In-City area, including any areas subject to transmission constraints within the In-City area that give rise to significant locational market power; and (b) any other area in the New York Control Area that has been identified by the ISO as subject to transmission constraints that give rise to significant locational market power, and that has been approved by the Commission for designation as a Constrained Area." *Id.* § 23.2.1 (17.0.0). The "In-City area" is located within the New York City Locality (i.e., Load Zone J).

5. First, NYISO proposes to revise section 23.3.1.4.6 of the Services Tariff to exclude costs and penalties associated with unauthorized natural gas consumption from generator reference levels. NYISO states that generators sometimes seek to include additional charges or penalties that interstate natural gas pipelines or local distribution companies (LDC) assess for the unauthorized use of natural gas in their reference levels and bids. According to NYISO, interstate natural gas pipelines and LDCs have expressed concern that allowing generators to recover costs or penalties associated with unauthorized natural gas consumption designed to economically deter such behavior neutralizes the economic disincentive of generators to avoid consuming unauthorized natural gas. NYISO explains that unauthorized natural gas consumption may occur when, for example, supply or delivery conditions are such that natural gas consumption might compromise the reliable operation of the natural gas delivery system.[15]

6. Given concerns from interstate natural gas pipelines and LDCs about unauthorized natural gas consumption, NYISO proposes to identify unauthorized and penalty natural gas use, based primarily on Commission-accepted and New York Public Service Commission-approved tariffs of the interstate natural gas pipelines and LDCs, respectively, and to exclude such costs from a generator's reference level. NYISO contends that interstate natural gas pipelines and LDCs are best situated to specify when natural gas use is unauthorized or needs to be deterred by applying penalties because they are responsible for the reliable and efficient operation of the natural gas delivery system. NYISO states that unauthorized natural gas use or penalty natural gas may result from, but is not limited to: (1) consumption of natural gas in violation of the terms of an Operational Flow Order issued by the relevant interstate natural gas pipeline or LDC;[16] (2) violation of an instruction issued by the relevant interstate natural gas pipeline or LDC restricting consumption of natural gas or use of natural gas imbalance service, when such instructions are issued consistent with the interstate natural gas pipeline's or LDC's authority under a tariff, rate schedule, or contract; (3) consumption of natural gas during a period of authorized interruption of service by the relevant interstate natural gas pipeline

[15] NYISO October 29, 2015 Filing at 3.

[16] An Operational Flow Order is issued to natural gas shippers when the pipeline is experiencing adverse operational events on its system. Operational Flow Orders may require shippers to maintain uniform hourly flows, keep their receipts and deliveries in balance, and/or prohibit any variation from scheduled quantities. Shippers who violate Operational Flow Orders are subject to high penalties intended to deter any violation of the Operational Flow Order. *See, e.g.*, 18 C.F.R. § 284.12(b)(iv) (2015); Algonquin Gas Transmission LLC, FERC NGA Gas Tariff Algonquin Database 1, § 26, Protection of System Operations and Operational Flow Orders (2.0.0).

or LDC, determined in accordance with the terms of the applicable tariff, rate schedule, or contract; or (4) use of natural gas balancing services that are explicitly identified in the relevant interstate natural gas pipeline's or LDC's applicable tariff, rate schedule, or contract as unauthorized use or penalty gas.[17]

7. NYISO asserts that its proposed revisions will help enforce the economic disincentive interstate natural gas pipelines and LDCs rely on to prevent generators from consuming natural gas in circumstances that could jeopardize the reliability of the natural gas delivery system. NYISO notes that it will not consider natural gas consumption to be unauthorized if the Market Party obtains authorization from the relevant interstate natural gas pipeline or LDC to consume the natural gas. NYISO states that it expects generators requested to operate for reliability reasons via an Out-of-Merit[18] commitment request or a Supplemental Resource Evaluation[19] to obtain permission from the relevant interstate natural gas pipeline or LDC before consuming otherwise unauthorized natural gas.[20] NYISO contends that allowing generators to recover actual fuel costs in reference levels lowers the overall cost of electric service to consumers because Market Parties are encouraged to offer additional generation into the market.

8. Second, NYISO proposes revisions to section 23.3.1.4.6 of the Services Tariff to require NYISO to submit a report to the Commission and to market participants detailing an error and its impacts when: (1) NYISO does not use the best fuel cost information available to it to adjust reference levels to reflect fuel costs; and (2) NYISO's failure to do so affects market clearing prices, or has a guarantee payment impact that NYISO is

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[17] NYISO October 29, 2015 Filing at 8.

[18] "Out-of-Merit" is defined as "[t]he designation of Resources committed and/or dispatched by the ISO at specified output limits for specified time periods to meet Load and/or reliability requirements that differ from or supplement the ISO's security constrained economic commitment and/or dispatch." NYISO, Services Tariff, § 2.15 (4.0.0).

[19] A "Supplemental Resource Evaluation" is defined as a "determination of the least cost selection of additional Generators, which are to be committed, to meet: (i) changed or local system conditions for the Dispatch Day that may cause the Day-Ahead schedules for the Dispatch Day to be inadequate to meet the reliability requirements of the Transmission Owner's local system or to meet Load or reliability requirements of the ISO; or (ii) forecast Load and reserve requirements over the six-day period that follows the Dispatch Day." *Id.* § 2.19 (11.0.0).

[20] NYISO October 29, 2015 Filing at 3-4, 8.

not able to correct. NYISO contends that these Services Tariff revisions will improve transparency and will end the need for NYISO to submit reports or to seek tariff waivers addressing errors that do not, ultimately, impact NYISO's markets.[21] NYISO explains that, although it is required to use the best information available to it to adjust generator reference levels to reflect appropriate fuel costs, its software processes do not always use the most recent, best fuel cost information even when such information has been obtained and is, technically, available to NYISO.[22] When this occurs, NYISO states that its Services Tariff does not specify any consequence. NYISO states that its proposed revisions formalize the process it currently uses when it is unable to use the best available fuel cost information. Currently, NYISO explains that it reviews every such occurrence for possible market clearing price and guarantee payment impacts. NYISO then corrects any guarantee payment impacts consistent with section 23.3.3.3.3 of the Services Tariff and reports every instance that cannot be corrected to the Commission as a tariff violation, whether or not the occurrence resulted in a market impact. NYISO notes that, to date, it has been able to correct all guarantee payment impacts it has identified.

9. Third, NYISO proposes revisions to section 23.3.1.1.2 of the Services Tariff that revise the energy market physical withholding rules to allow generators to not bid into the real-time market when generating would require consumption of unauthorized natural gas, or natural gas that is subject to a penalty, under the relevant interstate natural gas pipeline or LDC tariff. NYISO explains that it does not expect a generator to offer incremental generating capability in the real-time market when it is unable to procure natural gas and would be required to consume unauthorized natural gas to operate. NYISO states that, because generators will not be allowed to incorporate unauthorized natural gas charges into reference levels or ex-post cost recovery requests, NYISO does not seek to evaluate generators for physical withholding if, and to the extent, the Market Party demonstrates that its generator would have to consume unauthorized natural gas to operate. NYISO notes that its internal Market Mitigation and Analysis Department (MMA) and the external Market Monitoring Unit (MMU) may review claims that a generator was unable to bid because its operation (or further operation) would have required it to consume unauthorized or penalty natural gas.[23]

10. Fourth, with regard to default bid mitigation, NYISO proposes revisions to section 23.4.2.2.1 of the Services Tariff to clarify that, when a generator is subject to default bid mitigation, NYISO can require the Market Party to submit the NYISO-

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[21] *Id.* at 4-5.

[22] *Id.* at 4 (citing NYISO, Services Tariff, Attach. H, § 23.3.1.4.6 (11.0.0)).

[23] *Id.* at 5, 7-8.

determined default bid. NYISO explains that its implementation of default bid mitigation (i.e., requiring
a default bid be substituted for a bid submitted for a generator by a Market Party) is complicated by NYISO's inability to programmatically implement the mitigation in some circumstances. NYISO must instead rely on a manual application of the default bid.[24] Therefore, NYISO states that its proposed revisions add a specific obligation for the Market Party to include the default bid in its offer, thereby eliminating any potential ambiguity regarding the Market Party's bidding obligations when NYISO imposes default bid mitigation and is unable to alter the bid of a Market Party.[25]

11. Fifth, NYISO proposes revisions to section 23.4.3.3.3 of the Services Tariff to clarify the penalty that will apply when a generator submits inaccurate fuel cost information. Specifically, NYISO proposes to use the lesser of the Market Party's bid or the reference level that relies on the inaccurate fuel type and/or fuel price information to perform the real-time locational based marginal price impact test, and to calculate the real-time market penalty when necessary. NYISO states that the impact thresholds, which are used to determine whether the submission of inaccurate fuel cost information should be penalized, can result in an inappropriate determination of locational based marginal price impact and produce an inappropriately large penalty if the bids submitted for the generator are not equal to or greater than the generator's artificially-inflated reference levels.[26] According to NYISO, these revisions more accurately evaluate, and potentially penalize, the Market Party's actual behavior in the market and the actual impact of that behavior on the market.[27]

12. Lastly, NYISO proposes revisions to section 23.4.3.3.3 of the Services Tariff to modify the day-ahead and real-time guarantee payment impact test thresholds that apply to reliability-committed generators located outside of the New York City Constrained Area. NYISO explains that the thresholds are applied to determine if a penalty is appropriate when a Market Party submits inaccurate fuel type and/or fuel price information, and the inaccurate information is used to develop inflated reference levels

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[24] For example, NYISO states that it must manually apply after-the-fact mitigation for a period of up to six months from the date of the occurrence giving rise to mitigation outside of the New York City Constrained Area. *Id.* at 6 (citing NYISO, Services Tariff, Attach. H, § 23.4.8 (35.0.0)).

[25] *Id.* at 6, 8.

[26] *Id.* at 6 (citing NYISO, Services Tariff, Attach. H, § 23.4.3.3.3.2.2 (35.0.0)).

[27] *Id.* at 6-8.

that ultimately result in higher guarantee payments to the reliability-committed generator.[28] NYISO explains that, currently, a change in day-ahead or real-time guarantee payments is considered material if it is an increase of 200 percent for generators located outside of the New York City Constrained Area and 50 percent for generators located within the New York City Constrained Area. Because reliability-committed generators possess a form of market power, NYISO proposes to consider a change material if it is an increase of 50 percent for reliability-committed generators located outside of the New York City Constrained Area when testing for penalties.[29] NYISO contends that the mitigation rules regularly apply tighter thresholds to reliability-committed generators, which is consistent with NYISO's proposed approach here.[30]

13. NYISO requests an effective date for the proposed revisions of December 28, 2015, 60 days after the date of its filing. NYISO states that it intends to implement the Services Tariff revisions commencing with the December 28, 2015, real-time market and the December 29, 2015, day-ahead market.[31]

14. On December 28, 2015, Commission staff issued a deficiency letter to NYISO requesting additional information. On January 7, 2016, NYISO submitted its response to the deficiency letter jointly with its MMU. With the deficiency letter response, NYISO resubmits its proposed revisions and requests an effective date for the proposed revisions of the date of issuance of this order.

III. Notice of Filing, Responsive Pleadings, and Deficiency Letter Response

15. Notice of NYISO's filing was published in the *Federal Register*, 80 Fed. Reg. 68,520 (2015), with interventions and protests due on or before November 19, 2015. The New York State Public Service Commission filed a notice of intervention. NRG Power Marketing LLC and GenOn Energy Management, LLC, National Fuel Gas Distribution Corporation, Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Inc., Central Hudson Gas and Electric Corporation, Power Supply Long Island, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Rochester Gas

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[28] *Id.* at 7 (citing NYISO, Services Tariff, Attach. H, § 23.3.2.1.2 (11.0.0)).

[29] *Id.* (citing *N.Y. Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,030, at PP 47-48 (2010); NYISO, Services Tariff, Attach. H, §§ 23.4.3.3.3.1.2, 23.4.3.3.3.2.3 (35.0.0)).

[30] *Id.* at 7, 8-9 (citing NYISO, Services Tariff, Attach. H, § 23.3.1.2.3 (11.0.0)).

[31] *Id.* at 9.

and Electric Corporation, and Long Island Power Authority and Long Island Lighting Company d/b/a Power Supply Long Island (jointly, LIPA) filed timely motions to intervene. Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, National Fuel Gas Distribution Corporation, National Grid USA, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, New York LDCs) filed comments in support of the filing. LIPA filed a protest to the filing.[32]

16. On December 8, 2015, NYISO filed an answer to LIPA's protest.

17. Notice of NYISO's deficiency letter response was published in the *Federal Register*, 81 Fed. Reg. 1,942 (2016), with interventions and protests due on or before January 19, 2016. None was filed.

A. New York LDCs' Comments in Support

18. New York LDCs support NYISO's proposed Services Tariff revisions because they eliminate the unintended incentive for generators to use natural gas in circumstances when such usage is harmful to, and could inadvertently jeopardize, the reliability of the natural gas system. New York LDCs explain that interstate natural gas pipelines and LDCs typically use Operational Flow Orders during times of system constraint due to high gas volumes or when weather conditions combined with storage availability and potential upstream pipeline operational constraints result in stresses to the natural gas delivery system. According to New York LDCs, it is during these times when a deviation from a natural gas customer's scheduled and confirmed volumes could compromise the reliable operation of the natural gas delivery system. New York LDCs also state that generators have alternatives to relying on unauthorized natural gas, such as relying on alternative back-up fuel, scheduling additional volumes of natural gas to meet their commitments, or not submitting offers into the market when unauthorized natural gas consumption would be required. New York LDCs also note that generators can obtain authorization from the relevant interstate natural gas pipeline or LDC to consume what would otherwise be considered unauthorized natural gas. New York LDCs contend that this authorization exception properly balances the reliability needs of both the electric and natural gas systems.[33]

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[32] On November 20, 2015, LIPA filed an errata to its protest.

[33] New York LDCs November 19, 2015 Comments at 3-5.

B. <u>LIPA's Protest</u>

19. LIPA argues that the proposed Services Tariff revisions: (1) do not account for the natural gas market's mechanics, particularly in LIPA's territory; (2) create uncertainty as to the treatment of authorized use of balancing services; and (3) perpetuate an ineffectual policy that distorts the natural gas market and will lead to inconsistent treatment of market participants. LIPA further asserts that NYISO is improperly embedding rates, terms, and conditions of service in its Reference Level Manual. LIPA requests that the Commission require NYISO to undertake further work with stakeholders to: (1) define "unauthorized gas use" in such a way as to distinguish it from the authorized use of balancing services; and (2) use criteria that can be equally applied to natural gas usage by any generator regardless of the interstate natural gas pipeline or LDC that serves it.[34]

20. With regard to its first argument, LIPA contends that NYISO's real-time dispatch instructions do not account for the amount of natural gas reserved in the preceding gas day and the resulting risk for the generator that it will consume more natural gas than it procured the previous day. According to LIPA, as a result, large natural gas balancing charges can accumulate quickly if NYISO's real-time dispatch exceeds the day-ahead commitments on which LIPA must rely to determine its in-day nominations. In addition, LIPA states that, because it is in a transmission-constrained zone, LIPA-controlled generators are often the only resources available to resolve a market need, further increasing the risk of real-time commitment of incremental capability that triggers natural gas use above the daily nomination level.[35]

21. Next, LIPA argues that NYISO's proposed revisions create uncertainty as to the treatment of authorized use of balancing services. In particular, LIPA contends that the use of natural gas that triggers a balancing charge is still an authorized use of natural gas that simply is assigned charges under the tariff based on the level of imbalance relative to the day-ahead nomination quantity. However, LIPA states that there is no certainty to that conclusion given NYISO's vague reference to "unauthorized" natural gas use, its non-exhaustive list of potential unauthorized natural gas uses, and the lack of criteria bounding NYISO's discretion to determine what is unauthorized natural gas use.[36]

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[34] LIPA November 19, 2015 Protest at 5.

[35] *Id.* at 5-8.

[36] *Id.* at 8.

22. LIPA further argues that NYISO's proposed revisions perpetuate an ineffectual policy that distorts the natural gas market and will lead to inconsistent treatment of market participants. Specifically, LIPA states that the proposed revisions in section 23.3.1.4.6.2.1 of the Services Tariff improperly incorporate by reference terms that must be filed with the Commission and expose market participants to the subjective judgment of natural gas utilities. LIPA points to two instances where NYISO incorporates by reference the present and future tariffs, rate schedules, and customer contracts of applicable interstate natural gas pipelines and LDCs—for the definition of "unauthorized natural gas use," and for the reference to "unauthorized use or penalty gas." LIPA argues that this incorporation by reference is improper because it involves provisions that significantly affect the rates, terms, or conditions of Commission-jurisdictional service (i.e., limiting a generator's reference levels), meaning those provisions must be reviewed and approved by the Commission.[37]

23. In addition, LIPA contends that NYISO's requirements for documentation of authorization to use the natural gas in question are vague and unenforceable.[38] Proposed section 23.3.1.4.6.2.1.2 of the Services Tariff provides that, if the Market Party "has obtained specific authorization from the relevant natural gas LDC or pipeline to use gas that would otherwise be unauthorized, such use shall not be considered unauthorized use by the ISO." It goes on to require Market Parties to "make every effort to clearly document authorization they obtain from the LDC or pipeline" and states that "[d]ocumentation obtained after the fact will be considered." According to LIPA, the term "authorization" is ambiguous and does not explain the level of specificity required for market participants to be sure that they have met their obligation. Moreover, LIPA states that the term lacks standards for NYISO to enforce the obligation. LIPA requests that NYISO be required to adopt a process that has clear standards for application that can be achieved by Market Parties, recognizing that the form of documentation may differ.[39]

24. Finally, LIPA asserts that NYISO is improperly embedding rates, terms, and conditions of service in its Reference Level Manual and that NYISO should be required

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[37] *Id.* at 10-11 (citing *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008)).

[38] *Id.* (citing *Transmission Planning Reliability Standards*, 139 FERC ¶ 61,060, at P 12, *order on reconsideration*, 140 FERC ¶ 61,101 (2012); *Natural Gas Pipeline Co. of Am.*, 106 FERC ¶ 61,175, at PP 79-80 (2004); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at PP 414-415, 418, *order on reh'g*, 121 FERC ¶ 61,030 (2007)).

[39] *Id.* at 12-13.

to make an FPA section 205 filing with the Commission with revisions incorporating this information into its tariffs. LIPA explains that, concurrent with the development of these proposed revisions, NYISO also developed revisions to its Reference Level Manual. LIPA claims that proposed section 6.3.2.3 of NYISO's Reference Level Manual should be filed under section 205 with the Commission because it contains "practices that affect rates and service *significantly*, that are [realistically] *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."[40] In particular, LIPA explains that the section would require market participants to be able to produce upon the request of NYISO's MMU evidence of illiquidity as a basis for including balancing costs in reference levels. According to LIPA, as these procedures are being used to determine allowable fuel cost inputs for a generator for determining reference levels, they should be subject to Commission review under section 205 of the FPA. LIPA also contends that the proposed revisions to the Reference Level Manual would impose significant additional costs on market participants.[41]

C. <u>NYISO's Answer</u>

25. NYISO disputes LIPA's arguments. NYISO contends that it engaged in a lengthy stakeholder process to develop the proposed revisions and that a large majority of stakeholders approved the proposed Services Tariff revisions and Reference Level Manual revisions.[42]

26. With regard to LIPA's request that the Commission require NYISO to develop its own definition of "unauthorized gas use," NYISO contends that each established definition of unauthorized natural gas use (and identification of circumstances that constitute unauthorized natural gas use) in each interstate natural gas pipeline's or LDC's tariff reflects the individual circumstances of that interstate natural gas pipeline or LDC system in a way that a generic NYISO-developed definition could not. Moreover, NYISO argues that a NYISO-developed definition could conflict with the more specific rules set forth in interstate natural gas pipeline and LDC tariffs, potentially creating issues regarding the circumstances that cause natural gas consumption to be unauthorized or that

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[40] *Id.* at 13-15 (quoting *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (emphasis in original)) (citing *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at PP 16, 22-23 (2008); *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 811 (D.C. Cir. 2007)).

[41] *Id.* at 15-16.

[42] NYISO December 8, 2015 Answer at 4.

merit the imposition of a financial penalty. NYISO also asserts that it is not impermissibly "incorporating" anything into its own tariffs, but rather proposes to look to established natural gas tariffs to ascertain relevant and important information about how interstate natural gas pipelines and LDCs actually define and specify the unauthorized use of natural gas.[43]

27. Regarding LIPA's concern regarding natural gas use that triggers a balancing charge, but is still an authorized use of natural gas, NYISO explains that, as long as the relevant natural gas tariff does not classify such use as unauthorized, or subject the natural gas consumption to a penalty, NYISO will allow balancing charges and similar costs to be included in generator reference levels. Furthermore, NYISO states that the proposed revisions allow generators to obtain authorization from interstate natural gas pipelines or LDCs to use natural gas that would otherwise be considered unauthorized. NYISO suggests that generators can obtain pre-approval from the relevant interstate natural gas pipeline or LDC for circumstances that generators regularly encounter. NYISO also states that it will accept after-the-fact written approval of authorization if the urgency of the situation does not provide time to obtain written pre-approval. NYISO also states that it would prefer written documentation, but, in the event of an emergency or urgent electric system condition that only allows a generator to obtain verbal authorization, NYISO will accept the verbal authorization. NYISO also explains that authorization may be specific to a particular day or a particular transaction, but that NYISO will likewise accept blanket authorization.[44]

28. Further, NYISO refutes LIPA's contention that generators are at risk of being exposed to balancing charges when real-time operations differ from day-ahead schedules. In response, NYISO explains that its Services Tariff permits Market Parties to submit up-to-date fuel type and fuel price information for their generators with their real-time market bids and their day-ahead market bids, which allows generators to include reasonable expectations of authorized gas balancing charges and changes in natural gas prices.[45] NYISO states that its Services Tariff requires generators to maintain accurate reference levels when a generator's fuel type or fuel price changes, as well as to submit

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[43] *Id.* at 5-6. NYISO notes that, to the extent the Commission believes NYISO's incorporation by reference is inconsistent with Commission regulations, NYISO seeks waiver of section 35.1(a) of the Commission's regulations to permit such incorporation. *Id.* at 6 n.9.

[44] *Id.* at 7-9.

[45] *Id.* at 10-11 (citing NYISO, Services Tariff, § 23.3.1.4.6.3(i) (11.0.0)).

bids within the identified thresholds.[46] NYISO further notes that generators outside of the New York City Constrained Area have the opportunity to consult with NYISO regarding mitigation and sanctions.[47]

29. Finally, NYISO responds to LIPA's argument that NYISO improperly embeds rates, terms, and conditions of service in its Reference Level Manual. NYISO argues that it has proposed to include in its Reference Level Manual exactly the sort of information that the Commission has allowed previously to be included in a manual, rather than a tariff: instructions and guidelines that explain how NYISO implements the requirements of its tariffs and how market participants can comply with the reference level development and market power mitigation requirements of NYISO's tariffs.[48]

D. <u>NYISO's Deficiency Letter Response</u>

30. Commission staff sought additional information in the deficiency letter on: (1) how NYISO, its internal MMA, and MMU will review claims that a generator did not bid in the real-time market because generating would have required consumption of unauthorized natural gas or penalty natural gas; (2) whether NYISO has the ability to implement real-time screening of generators that do not bid in the real-time market because generating would have required consumption of unauthorized natural gas or penalty natural gas; (3) whether NYISO will re-post or revise market clearing prices if it later determines that a generator has failed to support its assertion that it did not bid in the real-time market because generating would have required consumption of unauthorized natural gas or penalty natural gas, and what actions NYISO will take in this instance; (4) how the proposed physical withholding rules would apply to capacity resources' day-ahead and real-time energy market must-offer obligations; and (5) how the proposed physical withholding rules would apply to resources needed for reliability.

31. With regard to reviewing claims that a generator did not bid in the real-time market because generating would have required consumption of unauthorized natural gas or penalty natural gas, NYISO states that, to identify potential physical withholding conduct with potential market impact, NYISO reviews each instance in which an electric facility submits offers less that its historical maximum output, known as Dependable Maximum Net Capability. NYISO explains that, after the market has cleared, its MMA employs screens to analyze every hour in the day-ahead market and real-time market.

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[46] *Id.* at 11 (citing NYISO, Services Tariff, § 23.3.1.4.6.1 (11.0.0)).

[47] *Id.* at 11-12 (citing NYISO, Services Tariff, §§ 23.3.3.1-2 (11.0.0)).

[48] *Id.* at 12-15.

According to NYISO, its MMA uses the screens to investigate and identify any potential physical withholding conduct with potential market impact, including researching why the generator was not offered, the likelihood of a market impact, and whether a consultation with the generator should be initiated. NYISO states that, when its MMA cannot determine that a generator's behavior was consistent with competitive conduct based on information in NYISO's possession, its MMA analyzes potential market impacts and engages the generator in a consultation process. NYISO explains that its proposal would consider generators to be acting consistent with competitive behavior when they can demonstrate that additional incremental real-time generation would have required the consumption of unauthorized natural gas or penalty natural gas.[49]

32. NYISO further explains that, similarly, MMU regularly reviews market outcomes to identify potential physical withholding, other anticompetitive conduct, and issues that could undermine market efficiency. NYISO states that, as a part of this process, MMU identifies instances where the generator, if scheduled, would likely have had a significant impact on clearing prices. NYISO affirms that MMU has always assumed that a competitive gas-fired generator would not choose to violate applicable tariffs or other agreements with natural gas pipelines or LDCs by consuming unauthorized natural gas, and, therefore, has always excluded gas-only generators that likely did not have fuel available after the day-ahead market from the list of potential instances of physical withholding. If MMU's screening process identifies a generator whose operation raises potential anticompetitive concerns, NYISO continues, MMU (alone or in collaboration with NYISO's MMA) will contact the generator for an explanation.[50]

33. In response to whether NYISO has the ability to implement real-time screening of generators that do not bid in the real-time market because generating would have required consumption of unauthorized natural gas or penalty natural gas, NYISO responds that, while it cannot screen in real-time, it analyzes both real-time market and day-ahead market outcomes. NYISO states that physical withholding reviews generally occur after the relevant market closes and schedules are issued to generators. According to NYISO, its MMA may not be aware of the reason for non-offers at the time of market close, unless the generator has contacted NYISO and provided a reason in advance. NYISO states that its MMA is generally aware of natural gas system conditions, including Operational Flow Orders, which it uses as part of its screening for physical withholding.[51]

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[49] NYISO January 7, 2016 Deficiency Letter Response at 1-3.

[50] *Id.* at 4.

[51] *Id.* at 4-5.

34. As for whether NYISO will re-post or revise market clearing prices if it later determines that a generator has failed to support its assertion that it did not bid in the real-time market because generating would have required consumption of unauthorized natural gas or penalty natural gas, NYISO explains that, in response to a Commission order, its Services Tariff specifically prohibits the retroactive recalculation of market clearing prices based on after-the-fact mitigation. Rather, if NYISO determines that a generator was physically withholding, NYISO states that it can impose a financial sanction after-the-fact to deter the exercise of market power.[52]

35. NYISO responds to the inquiry how the proposed physical withholding rules would apply to capacity resources' day-ahead and real-time energy market must-offer obligations by explaining that its proposal more clearly articulates an exception to the existing physical withholding rules for generators that choose not to offer incremental generation when generating would require the consumption of unauthorized natural gas or penalty natural gas. NYISO states that it does not propose any changes to the existing requirements that apply to capacity resources, which are completely separate from the physical withholding rules. NYISO states that capacity resources will continue to be subject to all of the existing capacity resource requirements, including the availability and must-offer requirements. NYISO explains that, therefore, when a capacity resource notifies NYISO of an outage in the day-ahead market due to fuel restrictions (for example), the event could impact the unit's Equivalent Demand Forced Outage Rate[53] and reduce the amount of Unforced Capacity[54] that the capacity resource is qualified to supply.[55]

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[52] *Id.* at 5-6.

[53] "Equivalent Demand Forced Outage Rate" is defined as "[t]he portion of time a unit is in demand, but is unavailable due to forced outages." NYISO, Services Tariff, § 2.5 (7.0.0).

[54] "Unforced Capacity" is defined as "[t]he measure by which Installed Capacity Suppliers will be rated, in accordance with formulae set forth in the ISO Procedures, to quantify the extent of their contribution to satisfy the [New York Control Area] Installed Capacity Requirement, and which will be used to measure the portion of that [New York Control Area] Installed Capacity Requirement for which each [Load Serving Entity] is responsible." NYISO, Services Tariff, § 2.21 (3.0.0).

[55] NYISO January 7, 2016 Deficiency Letter Response at 6-7 (citing NYISO, Services Tariff, § 5.12.6 (14.0.0)).

36. Lastly, NYISO responds to how the proposed physical withholding rules would apply to resources needed for reliability. NYISO explains that it relies on three processes to commit generating resources needed for reliability: (1) the Local Reliability Rule requirements commitment process; (2) the Day-Ahead Reliability Unit (DARU) commitment process; and (3) the Supplemental Resource Evaluation (SRE) commitment process (real-time). NYISO states that its day-ahead Security Constrained Unit Commitment process can commit generators to address Local Reliability Rule requirements or as DARUs. NYISO explains that generators that are eligible to be selected for Local Reliability Rule or DARU commitments are subject to the same requirements as those imposed on all other generators in the day-ahead market and are reviewed for potential physical withholding. NYISO states that it expects generators that are requested to operate for electric system reliability via an SRE to obtain permission from the relevant natural gas pipeline or LDC before they consume unauthorized or penalty natural gas. If NYISO determines that a generator was capable of operating, but did not respond to an SRE, NYISO explains that it may impose financial sanctions under the physical withholding rules and the event could impact the generator's Equivalent Demand Forced Outage Rate and reduce the amount of Unforced Capacity the capacity resource is qualified to supply.[56]

IV. Discussion

A. Procedural Matters

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[57] the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.[58] We accept NYISO's answer because it has provided information that has assisted us in our decision-making process.

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[56] *Id.* at 7-8.

[57] 18 C.F.R. § 385.214 (2015).

[58] *Id.* § 385.213(a)(2).

B. **Commission Determination**

39. We accept NYISO's filing, subject to condition, effective February 18, 2016, as requested.[59] We find that, subject to NYISO submitting a compliance filing to be submitted within 30 days of the date of this order, NYISO's proposed revisions to section 23.3.1.4.6 of the Services Tariff to exclude costs and penalties associated with unauthorized natural gas consumption from generator reference levels are just and reasonable. Allowing generators to recover costs and penalties associated with unauthorized natural gas consumption could jeopardize the reliability of natural gas pipeline and transmission systems and is therefore at odds with the reliability and costs benefits otherwise associated with allowing generators to recover actual fuel costs in reference levels.[60] Market Parties taking unauthorized natural gas will decrease pipeline pressure and could lead to a loss of natural gas service for some customers, including other generators. Costs and penalties associated with unauthorized natural gas consumption are designed to "provide an economic disincentive to shippers that might take actions which could threaten the operational integrity of the pipeline."[61] Allowing the recovery of the cost of the penalties would neutralize the economic incentive for generators to adhere to interstate natural gas pipeline and LDC tariff requirements, contrary to the purpose of the penalties. The proposed revisions will help ensure Market Parties in NYISO cannot work an end-run around penalties assessed by interstate natural gas pipelines and LDCs, which are intended to ensure reliability.

40. LIPA takes issue with NYISO's proposed definition of "unauthorized gas use," which incorporates by reference the relevant interstate natural gas pipeline and LDC tariff definitions of unauthorized natural gas and penalty natural gas.[62] LIPA argues that the proposed definition will expose market participants to the subjective judgment of natural

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[59] The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC,* 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

[60] Absent the opportunity to recover incremental fuel costs, Market Parties might not elect to offer additional generation into NYISO's markets, which could result in NYISO having to dispatch higher cost resources to meet real-time demand, thereby increasing real-time energy prices and uplift charges.

[61] *Algonquin Gas Transmission, LLC,* 113 FERC ¶ 61,146, at P 6 (2005), *reh'g denied*, 115 FERC ¶ 61,067, at P 13 (2006).

[62] LIPA November 19, 2015 Protest at 10-11.

gas utilities. We do not share LIPA's concerns. Interstate natural gas pipelines and LDCs are in the best position to determine what constitutes unauthorized natural gas and penalty natural gas on their respective systems. As NYISO explains, each established definition of unauthorized natural gas use in each interstate natural gas pipeline's or LDC's tariff reflects the individual circumstances of that interstate natural gas pipeline or LDC system in a way that a generic NYISO-developed definition could not.[63] Further, we agree with NYISO that a NYISO-developed definition could conflict with the more specific rules set forth in interstate natural gas pipeline and LDC tariffs, potentially creating issues regarding the circumstances that cause natural gas consumption to be unauthorized or that merit the imposition of a financial penalty.[64] As explained by New York LDCs, interstate natural gas pipelines and LDCs typically issue Operational Flow Orders during times of system constraint due to high natural gas volumes or when weather conditions combined with storage availability and potential upstream pipeline operational constraints result in stresses to the natural gas delivery system.[65] When interstate natural gas pipelines and LDCs assess charges to generators under these provisions for unauthorized natural gas and penalty natural gas, it is just and reasonable to exclude those charges from a generator's reference level in NYISO's markets to protect the reliability of the natural gas pipeline system, as well as the transmission system.

41. LIPA further contends that the definition of "unauthorized gas use" is vague, and, combined with the alleged lack of detail in proposed section 23.3.1.4.6.2.1.2 regarding documentation of authorization to use the natural gas in question, is unjust and unreasonable, because it lacks criteria bounding NYISO's discretion to determine what constitutes unauthorized natural gas use.[66] We disagree with LIPA that NYISO's

[63] NYISO December 8, 2015 Answer at 4.

[64] We further note that interstate natural gas pipeline tariffs are reviewed by this Commission and LDC tariffs are reviewed by the appropriate state regulatory authority.

[65] New York LDCs November 19, 2015 Comments at 3-5.

[66] LIPA November 19, 2015 Protest at 11-13.

proposal is vague and potentially unenforceable.[67] We do not find it necessary for NYISO to pinpoint the specific tariff provisions in each interstate natural gas pipeline's or LDC's tariff or each generator's fuel arrangements that will not be reimbursed. Demanding such specificity could result in NYISO having to modify its Services Tariff every time a generator alters its fuel arrangements or an interstate natural gas pipeline or LDC changes its tariff. We also reject LIPA's request that the Commission direct NYISO to work with its stakeholders on the definition of unauthorized natural gas use. NYISO had already done so before making this filing, and NYISO explains in its answer the lengthy stakeholder process it engaged in to develop this filing.[68] We nevertheless recognize that, with experience, NYISO may choose to work with its stakeholders to further define what constitutes unauthorized natural gas use on a fact-specific basis.

42. Further, NYISO's proposal offers sufficient flexibility for generators. As New York LDCs indicate in their comments, interstate natural gas pipelines and LDCs use best efforts to provide all customers with flexibility in flow, and impose Operational Flow Orders only when needed to protect system integrity. In addition, NYISO will not consider natural gas usage to be unauthorized, even during a period when an Operational Flow Order is in effect, if the generator obtains the appropriate authorization from the relevant interstate natural gas pipeline or LDC. We do not agree with LIPA that the proposed revisions are unclear as to the meaning of and documentation necessary to support an "authorization." NYISO explains in its answer that generators can obtain pre-approval from the relevant interstate natural gas pipeline or LDC for circumstances that generators regularly encounter and NYISO will accept after-the-fact written approval of authorization if the urgency of the situation does not provide time to obtain written pre-approval.[69] Moreover, NYISO clarifies that generators can obtain blanket or conditional authorizations.[70]

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[67] In support of its claim, LIPA cites a Commission order directing CAISO to address potentially vague and unenforceable tariff language. *See Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at PP 414-415, 418, *order on reh'g*, 121 FERC ¶ 61,030 (2007). We disagree with LIPA that NYISO's proposal is similar to the CAISO tariff language at issue in that proceeding. Here, NYISO *has* proposed a definition of "unauthorized gas use" based on the specific provisions in interstate natural gas pipeline and LDC tariffs and has provided examples of what circumstances constitute "unauthorized gas use."

[68] NYISO December 8, 2015 Answer at 4.

[69] *Id.* at 8.

[70] *Id.* at 9.

43. LIPA also argues that routine pipeline charges for imbalances should be included in generator reference levels and asks that the Commission deny NYISO's proposal to exclude such charges.[71] We agree with NYISO that NYISO's definition of "unauthorized gas use" excludes from generator reference levels *only* those balancing charges that are explicitly identified under an interstate natural gas pipeline's or LDC's tariff as *unauthorized* natural gas use or penalty natural gas for the purposes of maintaining the reliability and integrity of the natural gas delivery system.[72] We do not interpret this provision to exclude from generator reference levels the majority of balancing charges that a generator may accrue for minor deviation in natural gas takes, but such determination must be made by NYISO in its evaluation of a generator's reference level. Also, as NYISO notes, a generator can obtain clarification from the relevant interstate natural gas pipeline or LDC if the tariff is unclear as to what constitutes unauthorized natural gas or penalty natural gas.[73] NYISO further explains that the risk of cost exposure when real-time dispatch varies from day-ahead schedules is mitigated by Services Tariff provisions that permit Market Parties to submit up-to-date fuel type and fuel price information for their generators with their real-time market bids and their day-ahead market bids.[74]

44. Turning to LIPA's assertion that NYISO is improperly embedding rates, terms, and conditions of service in its Reference Level Manual,[75] section 205(c) of the FPA requires public utilities to file "schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges . . . ."[76] Because "there is an infinitude of practices affecting rates and service," public utilities are required to file for Commission review "only those practices that affect rates and service *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."[77] The Commission has

[71] LIPA November 19, 2015 Protest at 5-8.

[72] NYISO December 8, 2015 Answer at 7-8.

[73] *Id.* at 8.

[74] *Id.* at 10-11 (citing NYISO, Services Tariff, § 23.3.1.4.6.3(i) (11.0.0)).

[75] LIPA November 19, 2015 Protest at 13-16.

[76] 16 U.S.C. § 824d(c) (2012).

[77] *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (emphasis in original).

"broad bounds of discretion[] to give concrete application to this amorphous directive"[78] and uses the "rule of reason" to determine whether provisions included in manuals must be filed under section 205 for Commission review.[79] The Commission has found that it is appropriate for manuals "to contain implementation details, such as instructions, guidelines, examples and charts, which guide internal operations and inform market participants of how the [ISO] conducts its operations under the . . . tariff."[80] NYISO's proposed revisions to its Reference Level Manual, which LIPA attached to its protest, contain "implementation details" for how generators can include balancing costs in their reference levels, among other provisions.[81] While LIPA contends that such details should be included in the Services Tariff, subject to Commission review, we disagree. We find that NYISO does not need to include in its Services Tariff the types of support it will accept as documentation for generators to include natural gas balancing costs in their reference levels because such details do not significantly affect rates, terms, and conditions of service.[82] They are therefore appropriately included in the Reference Level Manual. We reject LIPA's request to require NYISO to include proposed section 6.3 of its Reference Level Manual in its Services Tariff.

45. We now address the remainder of NYISO's proposed revisions, which: (1) give Market Parties an exemption from physical withholding evaluation when, and to the extent, a generator does not bid into the real-time market because generating as a result of that bid would require consumption of unauthorized natural gas or penalty natural gas; (2) impose a reporting obligation on NYISO in the event NYISO does not use the best fuel cost information available to it to adjust reference levels; (3) authorize NYISO to require a Market Party to submit a default bid or default bid parameters for a mitigated resource; (4) revise the penalty calculation NYISO performs when Market Parties submit

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[78] *Id.*

[79] *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008) (citations omitted) (defining the "rule of reason" as discerning which practices "significantly affect rates, terms and conditions" and, therefore, must be filed for Commission review).

[80] *Id.*

[81] This is consistent with the Commission's findings elsewhere that business practices manuals must conform to and comply with the tariff. *See, e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 30, *order on reh'g*, 117 FERC ¶ 61,113 (2006).

[82] *See* NYISO December 8, 2015 Answer at 12-15 (explaining what NYISO proposes to include in its Reference Level Manual).

inaccurate fuel type or fuel price information; and (5) modify the impact threshold to evaluate submission of inaccurate fuel type or fuel price information when generators are committed for reliability outside of the New York City Constrained Area. We find these proposed tariff revisions to be just and reasonable, subject to condition, because these revisions should allow the recovery of actual authorized fuel costs and ensure cooperation and coordination between generators and interstate natural gas pipelines and LDCs, thus contributing to the reliable operation of the electric system.

46. Finally, while we accept the entirety of NYISO's proposed revisions above, we will require NYISO to clarify one aspect of its physical withholding evaluation. Specifically, we find that further clarification is required to proposed section 23.3.1.1.2 of NYISO's Services Tariff regarding the proposed exemption from the physical withholding evaluation related to unauthorized natural gas use. NYISO proposes in that section to exempt forced outages from physical withholding evaluation "subject to verification by the ISO as may be appropriate." However, NYISO's proposed revisions do not specifically impose a similar verification requirement with respect to its proposed provision exempting from the physical withholding evaluation a generator that did not bid into the energy market where doing so would require it to consume unauthorized natural gas. We find no reason for different verification requirements that could create an opportunity for market participants to exercise market power by engaging in physical withholding. Requiring NYISO to apply the verification requirement here is consistent with NYISO's statements in its deficiency letter response that, to identify potential physical withholding conduct with potential market impact, NYISO reviews each instance in which an electric facility submits offers less than its historical maximum output.[83] We therefore accept NYISO's filing, subject to the condition that NYISO apply the verification requirement to the proposed exemption from physical withholding evaluation for generators that cannot supply capacity in the real-time market where doing so would require the use of unauthorized natural gas or penalty natural gas.

<u>The Commission orders</u>:

(A) NYISO's filing is hereby accepted, to become effective February 18, 2016, subject to condition, as discussed in the body of this order.

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[83] NYISO January 7, 2016 Deficiency Letter Response at 1-3.

(B) NYISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.