

171 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

New York Independent System Operator, Inc.

Docket No. ER20-1470-000

ORDER GRANTING WAIVER REQUEST

(Issued June 1, 2020)

1. On April 1, 2020, pursuant to Rule 207(a)(5) of the Commission's regulations,¹ the New York Independent System Operator, Inc. (NYISO) submitted a request for a one-time, limited waiver of Section 4.4.1.2.1 of its Market Administration and Control Area Services Tariff (Services Tariff). The waiver would provide NYISO additional time to correct a misalignment between NYISO's market software and the rules in that provision (Waiver Request). As discussed below, we grant the Waiver Request.

I. Background

2. Section 4.4.1.2.1 of NYISO's Services Tariff sets forth a number of rules related to real-time bids to supply energy and ancillary services other than external services.² NYISO's Waiver Request is related to NYISO's implementation of a rule within Section 4.4.1.2.1 of its Services Tariff that prohibits a generator from increasing its minimum generation bid in real-time when it receives a day-ahead energy or regulation service schedule. Specifically, the rule states: "Minimum Generation Bids or Regulation Service Bids for any hour in which such Resources received a Day-Ahead Energy schedule or a Regulation Service schedule, as appropriate, may not exceed the Minimum Generation Bids or Regulation Service Bids, as appropriate, submitted for those Resources in the Day-Ahead Market."³ NYISO explains that, in addition to prohibiting

¹ 18 C.F.R. § 385.207(a)(5) (2019).

² NYISO, Services Tariff § 4.4.1.2.1 (35.0.0).

³ *Id.*

certain generators from increasing their minimum generation bids in real-time, Section 4.4.1.2.1 allows generators that only receive a day-ahead schedule to provide non-synchronous operating reserves to increase their minimum generation bids in real-time.⁴ NYISO explains that its software's bidding logic incorrectly extended the prohibition on increasing minimum generation bids in real-time to all day-ahead generators, including those that only receive a schedule to provide non-synchronous operating reserves.⁵

II. NYISO's Waiver Request

3. NYISO seeks an eight-month waiver of the provision in Section 4.4.1.2.1 of its Services Tariff allowing generators that are committed day-ahead only for non-synchronous operating reserves to modify their minimum generation bids in real-time. NYISO explains that it recently discovered that its software does not provide the flexibility intended by that provision—i.e., it prevents all generators, even those that only receive a day-ahead schedule for non-synchronous operating reserves, from modifying their minimum generation bids in real-time. To allow time to develop a software fix, NYISO requests waiver of the tariff provision for up to eight months, not to extend beyond December 31, 2020. NYISO expects to deploy the necessary software improvements coincident with its broader software revisions to implement fast-start pricing reforms that NYISO proposed and the Commission accepted in a February 2020 order.⁶ NYISO also requests that the Commission excuse past instances of non-compliance with the provision at issue and claims that past instances of the concern that the requested waiver addresses cannot be corrected or reversed.⁷

4. NYISO asserts that its request meets the Commission's criteria for granting waiver. First, NYISO argues that it acted in good faith because it did not intentionally disregard the opportunity for a generator to increase its minimum generation bid in real-time when it only received a day-ahead schedule to provide non-synchronous operation

⁴ Waiver Request at 3.

⁵ *Id.*

⁶ See *N.Y. Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,057, at P 12 (2019) (directing NYISO to deploy a full set of software modifications addressing fast-start resources' commitment costs in the price setting process revisions by the end of 2020); *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-659-000, at 1 (Feb. 6, 2020) (delegated order) (accepting NYISO's proposed revisions to reflect revisions to fast-start resources' commitment costs in the price setting process).

⁷ Waiver Request at 2 n.4.

revenues.⁸ Rather, it inadvertently omitted a discrete component of bidding logic from the software at a time when just one or two generators could use this bidding option. According to NYISO, when it became aware of the discrepancy between NYISO's software and Section 4.4.1.2.1 of its Services Tariff, it took action to address the issue. Specifically, NYISO points out that it submitted this filing and acted diligently to incorporate the necessary software modification into its broader software revisions project to implement fast-start pricing reforms. NYISO contends that, due to the complexity of making and testing changes to the bidding and scheduling systems, developing these software modifications as a package is the most effective way to address this issue. NYISO adds that accelerating a stand-alone software fix to address the issue presented in its Waiver Request could introduce unnecessary risk and is unlikely to significantly hasten a solution.

5. Second, NYISO argues that the waiver is limited in scope because it involves a single tariff provision.⁹ Specifically, NYISO explains that the requested waiver, if granted, would only alleviate the obligation for NYISO to allow suppliers to increase minimum generation bids in real-time when generators only received a day-ahead schedule to provide non-synchronous operating revenues. NYISO notes that the scope of the waiver should be clearly understood by all NYISO market participants. According to NYISO, the Waiver Request will be in effect for only the period necessary for NYISO to code software modifications, perform the necessary quality assurance testing, and deploy the software consistent with its standard software development practices. NYISO states that it will notify the Commission and its stakeholders as soon as the necessary software improvements are deployed.

6. Third, NYISO contends that the Waiver Request is necessary to address a concrete problem.¹⁰ As illustrated by NYISO, its existing software logic prohibits a bidding approach that the Services Tariff permits. NYISO's Waiver Request, if granted, would allow NYISO ample time to develop and implement software consistent with NYISO's business practices and avoid potentially harmful effects associated with rushing a software patch.

7. Fourth, NYISO states that the Waiver Request, if granted, is not expected to adversely impact any party.¹¹ NYISO explains that the affected generators are aware of the issue and can submit day-ahead bids that are designed to recover their costs of

⁸ *Id.* at 4.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Id.*

providing minimum generation MWs in real-time. NYISO stresses the limited nature of the requested waiver and adds that denying the requested waiver could lead to a hastily developed and deployed software fix that could inadvertently introduce risk into NYISO's markets.¹²

III. Notice of Filing and Responsive Pleadings

8. Notice of NYISO's Waiver Request was published in the *Federal Register*, 85 Fed. Reg. 19,468 (Apr. 7, 2020), with interventions and protests due on April 22, 2020. The New York State Public Service Commission filed a notice of intervention. Calpine Corporation and NRG Power Marketing, LLC filed timely motions to intervene.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

10. We grant NYISO's prospective waiver request. The Commission has previously granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹³

11. We find that the circumstances of NYISO's Waiver Request satisfy these criteria. First, we find that NYISO acted in good faith because the prohibition on a generator increasing its minimum generation bid in real-time when it only received a day-ahead schedule to provide non-synchronous operating reserves was an inadvertent error. Moreover, when NYISO became aware of the misalignment between its software and the Service Tariff, NYISO took actions to address the issue, such as submitting a request for waiver and incorporating this software modification into its fast-start pricing software modifications project. Second, we find that the Waiver Request is limited in scope because it will remain in place for eight months, until the earlier of: (1) NYISO's development of the necessary software modifications, performance of necessary quality testing, and deployment of software consistent with standard software development

¹² *Id.*

¹³ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

practices; or (2) December 31, 2020. Additionally, NYISO's Waiver Request only pertains to a specific portion of a single tariff provision in NYISO's Services Tariff. Third, we find that the requested waiver addresses a concrete problem because NYISO's existing software logic prohibits a bidding approach that NYISO's Services Tariff permits. Granting the waiver, therefore, will allow NYISO to develop and implement software consistent with its business practices without the need to rush a software patch. Fourth, we find that, based on the record here, the requested waiver will not have undesirable consequences, such as harming third parties because affected generators are aware of the issue and can submit day-ahead bids that are designed to recover their costs of providing minimum generation MWs in real-time.

12. The waiver requested by NYISO, and granted by the Commission, has prospective effect only. We note, however, that NYISO requests that the Commission "excuse any instances of past non-compliance with the provision at issue," and adds that "[a]ny past instances of concern that the requested waiver will address cannot be corrected or reversed."¹⁴ Upon consideration, we will exercise our discretion in addressing such matters¹⁵ and, given the facts and the record before us in this matter, we take no action with respect to the instances of NYISO's past non-compliance with the Services Tariff.

The Commission orders:

NYISO's Waiver Request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ Waiver Request at 2 n.4.

¹⁵ See, e.g., *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("the breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions . . . in order to arrive at maximum effectuation of Congressional objectives").