

February 22, 2010

**By Hand Delivery**

Hon. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Response of the New York Independent System Operator, Inc. to  
Deficiency Letter Dated December 23, 2009; Docket No. ER10-119-000**

Dear Ms. Bose:

The New York Independent System Operator, Inc. ("NYISO") submits the following response to the requests for information set forth in the Deficiency Letter issued in the above docket dated December 23, 2009 ("December 23 Letter"). As requested in the December 23 letter, six copies of this response are being submitted, and an electronic version of this response is being sent to Mr. Jesse Hensley, at [jesse.hensley@ferc.gov](mailto:jesse.hensley@ferc.gov).

The December 23 letter requested additional information to assist the Federal Energy Regulatory Commission ("Commission") in rendering a decision on the tariff revisions proposed in the NYISO's October 27, 2009 filing. Specifically, the Commission requested clarification of the rationale for, and necessity of, the tariff revisions proposed in the NYISO's submittal.

The NYISO's proposed clarifying amendments to Sections 4.1.6 of its Market Services Tariff ("Services Tariff")<sup>1</sup> are intended to give current and future users of the NYISO's Tariffs a clear understanding that violations of the Commission's regulations prohibiting electric energy market manipulation<sup>2</sup> also violate the NYISO's Tariffs and can trigger a broad range of possible remedial actions from the Commission, including the ordering of retroactive refunds where appropriate. The proposed amendments also clarify (a) the scope of the NYISO's authority to address market manipulation, and (b) the process by which the NYISO will report potential electric energy market

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<sup>1</sup> Unless otherwise specified, capitalized terms have the meanings specified in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

<sup>2</sup> 18 C.F.R. § 1c.2 (2010).

manipulation to the Commission and seek remedies from the Commission in an effort to protect New York consumers.

The questions posed by Commission staff in the December 23 letter are set forth below, followed by the response of the NYISO. Some of the questions were subdivided so that the NYISO can specifically address each separate issue raised by the Commission.

- (1) *Section 4.1.6a1 provides that if the Commission or a court of competent jurisdiction determines there has been a violation of the Commission's regulations related to electric energy market manipulation (18 C.F.R. Section 1c.2 or any successor provision thereto), such violation is also a violation of the Services Tariff if the violation affects or is related to the ISO Administered Markets.*

*Please explain the purpose and necessity of this proposed provision. Include references to all tariff provisions, if any, which refer to "tariff violations" or equivalent language and actions or consequences that result there from.*

#### **NYISO Response**

The proposed tariff amendment provides a useful clarification of an existing, very broadly worded provision of the NYISO's Services Tariff. The relevant provision of the NYISO's tariff currently provides "All Customers shall comply with all applicable federal, state and local laws, regulations and orders, including orders from the ISO." The proposed revision: (1) clarifies that compliance with the Commission's rules prohibiting electric energy market manipulation, as determined by the Commission pursuant to Section 222 of the Federal Power Act or other statutory authority, falls within the ambit of the phrase "[a]ll Customers shall comply with all federal, state and local laws, regulations and orders..."; (2) makes clear to any reader of the Tariff that the NYISO has an obligation to and will report potential electric energy market manipulation to the NYISO's external Market Monitoring Unit; and (3) explains that, while the NYISO is required to report possible market manipulation, it is up to the Commission to determine if and how to remedy a violation of the statutory and regulatory prohibitions against electric energy market manipulation. Clarification of the NYISO's lack of authority to remedy violations of the Commission's regulations has proven necessary because some entities have expressed an inaccurate belief that the NYISO is or should be, as a matter of law, responsible for remedying actions that constitute electric energy market manipulation under the Commission's regulations.

*In addition, explain why the proposed provision singles out violations of the market manipulation regulation and does not include violations of all other Commission orders, rules, and regulations.*

### **NYISO Response**

In adding Section 222 to the Federal Power Act Congress singled out and addressed market manipulation. The NYISO's filing was prompted by Market Participant concerns that the NYISO needed to specifically and explicitly address the relationship between the Commission's electric energy market manipulation rules and its Tariffs. If the NYISO's proposed revisions are accepted, the Market Services Tariff will clearly state that compliance with the Commission's regulations prohibiting electric energy market manipulation is, unequivocally, a condition of taking service under the NYISO's Tariffs. In addition, Market Participants have explained to the NYISO that they want to avoid a situation where retroactive remedial action could be opposed on the grounds that conduct that constituted market manipulation was not a violation of the NYISO's Tariffs.

The NYISO would not be opposed to adding a separate statement that all Customer violations of the Commission's orders, rules and regulations also violate Section 4.1.6a of the NYISO's Market Services Tariff.

- (2) *The first sentence of Section 4.1.6a2 states that if NYISO becomes aware that a Customer may be engaging in, or might have engaged in, electric energy market manipulation, it shall promptly inform its Market Monitoring Unit.*

*Please explain the purpose and necessity of this proposed provision. In addition, explain why the proposed provision singles out violations of the market manipulation regulation and does not include violations of all other Commission orders, rules, and regulations.*

### **NYISO Response**

The purpose of the proposed provision is to explicitly state what the NYISO will do if it identifies potential electric energy market manipulation. While the NYISO would report possible electric energy market manipulation to its Market Monitoring Unit even in the absence of a tariff revision specifying this requirement, the NYISO and its stakeholders wanted the NYISO's obligation to be explicitly spelled out in the Tariffs. The proposed Tariff revisions do not include violations of all other Commission orders, rules, and regulations because the NYISO's market monitoring efforts are limited to the obligations set forth in its Tariffs. Neither the NYISO nor its Market Monitoring Unit are equipped, or have an obligation, to monitor Customer compliance with all applicable Commission orders, rules and regulations.

- (3) *The second sentence of Section 4.1.6a2 states that NYISO retains the discretion to inform the Commission of any potential electric energy market manipulation it identifies. Please explain the purpose and necessity of this provision given that any person or organization, including the NYISO, can at any time bring to the Commission's attention potential market manipulation violations. In addition,*

*explain how NYISO would exercise this discretion, including how NYISO would determine whether and when to inform the Commission of a potential violation.*

#### **NYISO Response**

Nothing prohibits direct reporting by the NYISO to the Commission. The purpose of the statement that the NYISO retains the discretion to inform the Commission directly of any potential electric energy market manipulation that it, itself, identifies, was to clarify that, although the NYISO is obligated to report a potential instance of electric energy market manipulation to its Market Monitoring Unit, the NYISO may not always feel that it is appropriate to wait for its Market Monitoring Unit to act. Under these circumstances, the NYISO may choose, and no Commission rule prohibits, to report a concern it has identified directly to the Commission's Office of Enforcement. In general, the NYISO will inform the Commission directly if the potential harm appeared to be material, and immediate Commission action appeared necessary to prevent or limit the perceived harm.

At the time this filing was submitted, the Commission had not yet acted in Docket No. ER10-65. Depending on the circumstances presented, possible electric energy market manipulation that the NYISO identifies may also be reportable as a Market Problem. If an instance of possible electric energy market manipulation is determined to present a potential Market Problem, the NYISO will comply with the more stringent of the two sets of reporting rules and will report the potential Market Problem directly to the Commission's Office of Enforcement.

*In light of the fact that NYISO has chosen an external rather than an internal or hybrid market monitoring structure, discuss if NYISO anticipates detecting potential violations in advance of the Market Monitoring Unit, and if so, how it will detect such violations.*

#### **NYISO Response**

The NYISO does not anticipate that it will detect possible violations in advance of its Market Monitoring Unit. However, the potential exists for the NYISO staff to identify electric energy market manipulation before the Market Monitoring Unit does in instances where the manipulation directly impacts the NYISO's discrete, independent tariff administration duties, or is detected in connection with the NYISO's performance of those duties.

*Also, please explain why the proposed provision singles out violations of the market manipulation regulation and does not include violations of all other Commission orders, rules, and regulations.*

**NYISO Response**

The NYISO and its Market Monitoring Unit have in the past, and will continue to report any material non-compliance they become aware of in the course of performing their respective duties. However, neither the NYISO nor its Market Monitoring Unit have the necessary knowledge or the capability to monitor more than 300 Market Participants' compliance with each pertinent Commission order, rule or regulation. Many Commission requirements that apply to jurisdictional entities have no relation to the NYISO's markets.

- (4) *The third sentence of Section 4.1.6a2 provides that if the ISO informs FERC's Office of Enforcement, it shall request that FERC determine whether a violation has occurred and, if so, that FERC impose appropriate remedies. Please explain the purpose and necessity of requesting such a determination and imposition of remedies, rather than simply providing FERC with the information NYISO has acquired.*

**NYISO Response**

This provision codifies the NYISO's intent with regard to Commission action on suspected electric energy market manipulation. The NYISO will request a definitive decision from the Commission or its Staff and, where appropriate, the NYISO will seek relief from the Commission. Also, Market Participants requested this language so that the NYISO would not just provide information to the Office of Enforcement, but submit it with a clear request for action.

- (5) *Proposed section 4.1.6a3 provided that section 4.1.6a does not independently empower NYISO or its Market Monitoring Unit to impose penalties for, or provide a remedy for, violations of the Commission's prohibition against electric energy market manipulation or for violations of NYISO's tariffs. Please explain the purpose and necessity of this proposed provision.*

**NYISO Response**

The purpose of this provision is to clearly state that the scope of the NYISO's authority to remedy electric energy market manipulation affecting its markets and violations of its Tariffs, is strictly limited to the authority that the Commission has granted the NYISO in its Tariffs. Stated another way, it is important to highlight that determining whether electric energy market manipulation has occurred and, if so, providing an appropriate remedy, are solely the Commission's responsibility, as a matter of law.

Please contact the undersigned with any questions regarding the above responses.

Respectfully submitted,

/s/ Alex M. Schnell

Robert E. Fernandez, General Counsel

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Alex M. Schnell

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Rensselaer, New York this 22<sup>nd</sup> day of February, 2010.

/s/ Kristin A. Bluvas

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