

June 13, 2013

**By Electronic Delivery**

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

**Re: *New York Independent System Operator, Inc.’s Proposed Tariff Revisions to Enhance Agency Data Sharing and Market Participant Eligibility Criteria Consistent with CFTC Exemptive Order; Docket No. ER13- \_\_\_\_ - \_\_\_\_***

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO or ISO”), hereby submits revisions to Section 12.4 of Attachment F to its Open Access Transmission Tariff (“OATT”) to modify the requirement that the NYISO provide advance notice to a Market Participant whose Confidential Information is requested by a court or regulatory body.<sup>2</sup> The NYISO is also proposing an enhancement to its Market Participant eligibility criteria set forth in Section 8 of its Market Administration and Control Area Services Tariff (“Services Tariff”). These revisions are proposed to ensure the NYISO, and its Market Participants, can take advantage of the regulatory certainty afforded by the Commodity Futures Trading Commission’s (“CFTC”) Final Order to Exempt Certain Specified Transactions of Regional Transmission Organizations and Independent System Operators issued on March 28, 2013 (“Final Order”).<sup>3</sup> Accordingly, the NYISO respectfully requests that the Commission issue an order by August 12, 2013, accepting the proposed tariff revisions, effective September 15, 2013, to allow Market Participants sufficient time to comply with the proposed eligibility criteria enhancement prior to the expiration of the NYISO’s no-action relief from the CFTC on September 30, 2013.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> Capitalized terms that are not otherwise defined herein shall have the meanings specified in Section 1 of the OATT and Services Tariff.

<sup>3</sup> Final Order in Response to a Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas from Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, 78 Fed. Reg. 19879 (April 2, 2013), available at: <http://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2013-07634> (“Final Order”).

**I. List of Documents Submitted**

The NYISO submits the following documents:

1. This filing letter;
2. A clean version of the proposed revisions to the OATT (Attachment I);
3. A blacklined version of the proposed revisions to the OATT (Attachment II);
4. A clean version of the proposed revisions to the Services Tariff (Attachment III); and
5. A blacklined version of the proposed revisions to the Services Tariff (Attachment IV).

**II. Copies of Correspondence**

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, General Counsel  
Raymond Stalter, Director of Regulatory Affairs  
\*Sara B. Keegan, Senior Attorney  
\*Nathan D. Markey, Attorney  
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\*Persons designated to receive service

**III. Service**

The NYISO will send an electronic 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 New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

**IV. Background**

On March 28, 2013, the CFTC issued its Final Order granting certain Independent System Operators and Regional Transmission Operators ("ISOs/RTOs") exemptive relief from CFTC regulation under the Dodd-Frank Act. The Final Order generally exempts all products bought or sold in the ISO/RTO-administered markets from all provisions of the Commodities

Exchange Act (“CEA”), with the exception of those provisions related to the CFTC’s retention of its general anti-fraud, anti-manipulation and enforcement authority.

The Final Order, however, contains certain conditions that the ISOs/RTOs must meet in order to be eligible for the exemption. Two such conditions require tariff revisions:

Condition 1 — Confidentiality of CFTC Data Requests: Each ISO/RTO must revise its tariffs to authorize the sharing of market data and information with the CFTC without notice to market participants.<sup>4</sup>

Condition 2 — Appropriate Person Requirement: To be eligible for the exemption, the transactions must be entered into by “appropriate persons” or “eligible contract participants,” as defined in the Commodity Exchange Act, or by persons who are in the business of: (i) generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system.<sup>5</sup>

In this filing, the NYISO is proposing tariff revisions to comply with these conditions. The NYISO believes the proposed tariff revisions will benefit the ISO-administered markets without negatively impacting Market Participants. Without these revisions there is a risk that the CFTC could consider the NYISO ineligible for the exemption provided in the Final Order.

## **V. Description of Proposed Revisions**

### **A. Confidentiality of CFTC Data Requests**

The NYISO is proposing revisions to Section 12.4 of Attachment F to its OATT to treat CFTC requests for Confidential Information the same as Commission requests for Confidential Information. The Commission has accepted similar tariff revisions proposed by the California Independent System Operator Corporation.<sup>6</sup>

These revisions will allow the NYISO to respond to CFTC data requests without notifying Market Participants. A notice requirement could compromise enforcement efforts of not only the CFTC but also the Commission if it is investigating the same matters or Market Participants. Maintaining the confidentiality of CFTC data requests will aid the Commission in its confidential investigations of similar matters and help prevent spoliation of evidence. The proposed revisions are also consistent with the information sharing principles endorsed by the Commission in the 2005 Memorandum of Understanding between the two agencies.

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<sup>4</sup> Final Order at 19892.

<sup>5</sup> Final Order at 19913.

<sup>6</sup> See *California Independent System Operator Corporation*, 142 FERC ¶ 61,069 (2013).

## **B. Appropriate Person Requirement**

The NYISO is proposing to add an eligibility requirement in new Section 8.1.3 of the Services Tariff to require that each Market Participant transacting in the ISO-administered markets is an “appropriate person” as defined in the CFTC’s Final Order (“Appropriate Person”). The proposed tariff revisions amount to a minor tightening of the NYISO’s existing eligibility and credit requirements that further the purposes of Order No. 741 – minimizing risk to the ISO/RTO markets.

Specifically, under the proposed tariff revisions, each Market Participant will be required to provide an officer certification, under penalty of perjury, that it is one of the following

(a) an “appropriate person,” as defined in sections 4(c)(3)(A) through (J) of the Commodity Exchange Act; or

(b) an “eligible contract participant,” as defined in section 1a(18)(A) of the Commodity Exchange Act and in 17 CFR 1.3(m); or

(c) a “person who actively participates in the generation, transmission, or distribution of electric energy,” as defined in paragraph 5(g) of the Final Order of the Commodity Futures Trading Commission at 77 FR 30596.

In such certification, the Market Participant will attest that it will immediately cease transacting in the ISO-administered markets if it loses its Appropriate Person status. Certifications will be due September 15 for current Market Participants (two weeks prior to the expiration of the NYISO’s no-action relief from the CFTC) and as part of the application materials for new Market Participants.

Based on stakeholder discussions, the NYISO believes that most Market Participants qualify as Appropriate Persons by having a net worth exceeding \$1 MM or total assets exceeding \$5 MM. Those Market Participants that are not currently Appropriate Persons may, nevertheless, become an Appropriate Person by providing the NYISO with an unlimited guaranty or a letter of credit, issued by an Appropriate Person, that secures its obligations to the NYISO.

The NYISO already has tariff provisions in place that allow any current or future Market Participant to secure its obligations to the NYISO by providing a letter of credit or unlimited guaranty. Therefore, the Appropriate Person requirement is not expected to create a barrier to market entry or otherwise have a negative impact on Market Participants or the ISO-Administered Markets.

## **VI. Effective Date**

The NYISO respectfully requests that the Commission issue an order by August 12, 2013, accepting the proposed tariff revisions, effective September 15, 2013.<sup>7</sup> The requested effective date complies with the Commission's notice requirements.<sup>8</sup> An order by August 12, 2013 and an effective date of September 15, 2013 will allow Market Participants sufficient time to comply with the proposed eligibility criteria enhancement prior to the expiration of the NYISO's no-action relief from the CFTC on September 30, 2013. This will also ensure the NYISO can take advantage of the regulatory certainty afforded by the CFTC Final Order prior to the expiration of the above-mentioned current no-action relief from the CFTC.

## **VII. Requisite Stakeholder Approval**

The Business Issues Committee approved the proposed revisions to Attachment F of the OATT on December 5, 2012, with four abstentions, and unanimously approved the proposed revisions to Section 8.4 of the Services Tariff on May 9, 2013. The Management Committee approved the proposed Attachment F revisions on December 18, 2012 with one abstention, and approved the Section 8.4 revisions on May 29, 2013 by a show of hands with one abstention. The Attachment F revisions were approved by the Board of Directors on January 14, 2013 and the Section 8.4 revisions were approved on June 11, 2013.

## **VIII. Conclusion**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the proposed tariff changes identified in this filing.

Respectfully submitted,

/s/ Sara B. Keegan  
Sara B. Keegan  
Senior Attorney

cc: Travis Allen  
Michael Bardee

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<sup>7</sup> The NYISO does not intend that its request for an effective date later than sixty days of the date of this filing be deemed to be a waiver of the requirement under 18 C.F.R. §35.3 that the Commission act on its proposed tariff revisions within sixty days of the date of this filing.

<sup>8</sup> 18 C.F.R. § 35.3 (2012).

Kimberly D. Bose, Secretary

June 13, 2013

Page 6

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