

December 23, 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.*, Docket No. ER14-\_\_\_\_-000;  
Proposed Tariff Amendments to Allow Early Termination of Incremental  
TCCs**

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act<sup>1</sup>, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits proposed amendments to its Open Access Transmission Tariff (“OATT”) to allow the early termination of Incremental Transmission Congestion Contracts (“TCCs”) and to reduce restrictions on Secondary Market<sup>2</sup> transfers of Incremental TCCs when such transfers present no TCC auction feasibility issues. Following a concern expressed by a Market Participant who was awarded Incremental TCCs in 2012 for the minimum life of 20 years, the NYISO is proposing a process by which Incremental TCCs could be terminated before they would otherwise expire. These proposed tariff amendments have been approved unanimously by the NYISO’s Management Committee.

**I. Documents Submitted**

1. This filing letter;
2. A clean version of the proposed revisions to the NYISO’s OATT (“Attachment I”);  
and
3. A blacklined version of the proposed revisions to the NYISO’s OATT (“Attachment II”).

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<sup>1</sup> 16 U.S.C. §824d (2000).

<sup>2</sup> Capitalized terms not specifically defined herein have the meaning set forth in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) or in its Open Access Transmission Tariff (“OATT”).

## II. Background and Justification

### Early Termination of Incremental TCCs

Incremental TCCs are available for merchant developers of new or improved transmission facilities that increase the transfer capability of the New York State Transmission System under provisions in the NYISO's OATT.<sup>3</sup> Section 19.2.4.6 of the OATT requires developers to elect a 20- to 50-year duration for awarded Incremental TCCs, which chosen duration may not exceed the expected operating life of the new facility. Concerns have been expressed that if the Congestion Rents that are payable on these Incremental TCCs become negative, the holder of the Incremental TCCs could remain liable for such negative congestion for the life of the Incremental TCCs, unless and until the congestion rents again become positive.<sup>4</sup>

To reduce this perceived risk, the NYISO is proposing a tariff revision to allow holders of Incremental TCCs to request an early termination of their portfolio by providing notice to the NYISO of such early termination date one year ahead. The NYISO proposes that termination may occur at any time during the duration of the Incremental TCCs; however this opportunity is proposed to extend only to the entire portfolio – either all Incremental TCCs, awarded with regard to a single Expansion, terminate early or none do. The NYISO proposes to require that an early termination date fall only at the end of a Capability Period to align the Incremental TCC end date with the end date of auction-purchased TCCs. The NYISO also proposes to disclose the one-year-ahead notice to the market place.

In addition, the NYISO is proposing several procedural safeguards to avoid adverse impacts that early termination of Incremental TCCs may cause. Adverse impacts could include a reduction in the value of TCCs with durations that extend beyond the noticed early termination date, if they acted as counterflow to the Incremental TCCs. In some cases, the adverse impact described above can also create infeasible Centralized TCC Auctions following the termination of Incremental TCCs if the now-terminated Incremental TCCs had acted as counterflow to TCCs that remain valid in the Auction.

To avoid selling new TCCs that could see a reduction in their value with the termination of the Incremental TCC, the NYISO is proposing to provide itself with the authority to include Points of Injection (“POIs”) and Points of Withdrawal (“POWs”) as prohibited injection or withdrawal points for auction-purchased TCCs, when necessary.<sup>5</sup> This prohibition would start

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<sup>3</sup> The NYISO was authorized to award Incremental TCCs pursuant to revisions to its OATT effective November 8, 2008. *New York Independent System Operator, Inc.*, 126 FERC 61,029 (2009)

<sup>4</sup> As is discussed, *supra*, the Incremental TCC could be reconfigured in a TCC Auction into a more valuable TCC. This process can ameliorate lower values caused by reverses in congestion rent payout but only for short period of time (for the duration of the new TCC made available by the offer of the Incremental TCC). The process would need to be repeated every year or every other year for the life of the Incremental TC. Terminating the Incremental TCC early presents a permanent remedy.

<sup>5</sup> The NYISO is authorized by OATT Section 19.9.2 to prohibit the sale of TCCs between certain POIs and POWs provided that it posts such prohibited POIs and POWs

with the first auction following notice of the termination of Incremental TCCs (issued one year in advance) and end with the auction following the final termination. This would reduce the opportunity for new TCCs, acting as counterflow to the Incremental TCCs being terminated, to be purchased in a TCC Auction during the period between notice of termination and the final termination date of the Incremental TCC.

If the early termination could produce auction infeasibility, the NYISO proposes to stagger the effective date of the termination for portion(s) of the Incremental TCCs over as many as 12 months to avoid such infeasibility. If the Incremental TCCs impact such a significant amount of transmission capacity that auctions over the life of other TCCs, with terms lasting beyond the one-year notice of termination period, may prove infeasible following the termination of the Incremental TCCs, the NYISO can stagger the termination date over a twelve month period to avoid future auction infeasibility.<sup>6</sup>

Notwithstanding these procedural safeguards, the NYISO does not expect that early termination of Incremental TCCs will create problems for holders of other TCCs or for the feasibility of future auctions. The market offers frequent opportunities to reconfigure a low-value TCC into one of higher value through its TCC auctions. The NYISO provides an opportunity to sell a TCC and buy one back with a different POI and POW every month in its Reconfiguration Auctions and every six months in its Centralized TCC Auctions. The Centralized TCC Auction also offers significant price discovery because it offers each TCC duration (one-year TCCs, six-month TCCs) in as many as four rounds each.<sup>7</sup> Moreover, it is not expected that any awarded Incremental TCCs will be so sizable that when they terminate, even with the minimum one-year notice, the termination would have a significant impact on the feasibility of future TCC auctions.

Finally, providing an early termination option for Incremental TCCs aligns with the early termination options that the OATT makes available to holders of other long-term TCCs -- Historic Fixed Price TCCs and Non-Historic Fixed Price TCCs. These TCCs may have durations of as long as ten years but their holders have an annual right of renewal.<sup>8</sup> Should the holder of such a TCC see negative congestion, or otherwise desire to terminate the TCC, the OATT provides the holder with the opportunity not to renew it.

### **Secondary Market Transfers**

In reviewing the OATT for necessary amendments to effectuate this early termination proposal, the NYISO became aware that the restriction on sales of Incremental TCCs in the Secondary Market (OATT Section 19.2.4.8) was unnecessary when all awarded TCCs were from

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<sup>6</sup> Because the NYISO does not currently sell TCCs with durations longer than two years, an opportunity to stagger an effective date over a 12 month period would resolve any infeasibility the early termination could have caused.

<sup>7</sup> When a TCC is offered for sale in a TCC Auction, the holder of the offered TCC receives the clearing price he would have paid had he bought the offered TCC in that auction.

<sup>8</sup> See: OATT Sections 19.2.1.1 and 19.2.2.2

a single POI to a single POW. The restriction was added to avoid the infeasibility of portions of awarded Incremental TCCs, if fewer than all POI / POW combinations in an award were transferred in the Secondary Market.<sup>9</sup> However, this concern does not apply to awarded Incremental TCCs when the entire portfolio consists of a single POI / POW combination. Thus, the NYISO is proposing an amendment to Section 19.2.4.8.2 to allow Secondary Market transfers of portions of an Incremental TCC portfolio when the entire portfolio consists of a single POI / POW combination.

For clarity, the NYISO is also proposing a new paragraph in this section to indicate that a Secondary Market transfer that is an assignment also acts as an assignment of the right to early termination of such Incremental TCCs. The right to early termination is contained in the OATT Sections that immediately follow Section 19.2.4.8.2 and is described above.

Pursuant to a proposed amendment to Section 19.2.4.10, the NYISO also proposes that outage charges, which apply to Expanders, also apply to an Expander's assignee.<sup>10</sup> When the Expansion built by a merchant developer is out of service, congestion charges otherwise collected in the Day-Ahead Market and used to fund the payment of congestion rent to the Incremental TCC holder, will not be collected. An outage charge is applied to the merchant developer / holder of the Incremental TCC to avoid spreading the congestion rent shortfall caused by the Expansion's outage to the Transmission Owners and their customers. When the Incremental TCC is assigned, the responsibility for paying an outage charge should also be assigned as well, rather than remaining with the Expander as it could have without this amendment.

### **III. Proposed Tariff Revisions and Justification**

#### **OATT Section 19.2.4.8**

The NYISO proposes to amend this section by adding a new subsection 19.2.4.8.2 and renumbering existing language as subsection 19.2.4.8.1. The new subsection 19.2.4.8.2 would allow an Expander to make a Secondary Market transfer of less than its entire portfolio of Incremental TCCs when all the Incremental TCCs, related to the same expansion, specify the same POI and the same POW. Only an Expander may make a Secondary Market transfer.

The NYISO proposes to add an additional sentence to this subsection to indicate that separate POIs or POWs that all originate from a single generating facility that is comprised of a set of smaller units, such as gas turbines, may be considered a single POI or POW for the

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<sup>9</sup> Awards of Incremental TCCs may include up to three POI / POW combinations, some or all of which may depend on each other to support all the TCCs awarded.

<sup>10</sup> See OATT 19.2.4.1 for the definition of "Expander:"(i) [A]ny change to, reconfiguration of, and/or construction of new transmission facilities or other transmission facility improvements that are potentially eligible for an award of Incremental TCCs shall be referred to as an "Expansion;" and (ii) a person or entity that is pursuing an Expansion and requesting Incremental TCCs shall be referred to as an "Expander."

purpose of this Secondary Market sale opportunity.<sup>11</sup> In addition, the NYISO proposes to add to this Section a provision that would assign the option to terminate Incremental TCCs early to an assignee of the Incremental TCCs.

Modest amendments are proposed for the renumbered subsection 19.2.4.8.1 to introduce the new subsection 19.2.4.8.2, and to refer to additional OATT provisions in 19.6.2 dealing with Secondary Market sales. The final amendment in this subsection clarifies that ISO credit requirements apply only to Primary Holders of TCCs. While a Secondary Market transfer can be made to a non-Primary Holder, the ISO will make its TCC settlement with only Primary Holders.<sup>12</sup>

### Section **19.2.4.9**

The NYISO proposes to add this new Section to the OATT to describe the process an Expander, or its assignee, would need to follow to terminate early the Incremental TCCs the Expander obtained with regard to a single expansion. Only an Expander, or its assignee (both being referred to as “Expanders” in the balance of this filing letter), may terminate Incremental TCCs before their expiration date and such termination must be of the entire portfolio. The NYISO also proposes that the opportunity for early expiration expire with: i) early termination under this subsection; ii) an assignment by the Expander of the Incremental TCCs; or iii) a Secondary Market transfer of the Incremental TCCs for the balance of the duration of those Incremental TCCs.

The second paragraph in this new subsection is proposed to provide the basic process an Expander would need to follow to terminate its Incremental TCCs early. The process is proposed to include: a notice of early termination delivered to the NYISO by Certified, Return-Receipt U.S. Mail, or by a reputable commercial courier service employing a parcel tracking system; a requirement that the Notice be provided at least one year before the termination date and that the notice, once delivered to the NYISO in this manner be irrevocable. The NYISO also proposes that the Incremental TCCs terminate on the last day of a Capability Period which date falls no earlier than one year after the notice of early termination was received by the NYISO.

The NYISO proposes a new subsection 19.2.4.9.1 to set forth the obligations of the NYISO following receipt of the notice of early termination. These include providing the notice of early termination to the market. In addition, if necessary to ensure the next Centralized TCC Auction starts with a feasible power flow, this subsection would authorize the NYISO to: i) update its ISO Procedures to include prohibited bid points or combinations of prohibited bid points at which TCCs with durations of longer than one year may not be available; and / or ii) require that the Incremental TCC award proposed for early termination be apportioned such that the Incremental TCCs terminate in portions over as many as 12 months, beginning with the

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<sup>11</sup> Examples of such configurations include generation that consists of a series of gas turbines in one location; and a single combined cycle facility that is modeled in the NYISO dispatch system with several PTIDs representing each gas turbine and a portion of the steam facility. In these examples the separate POIs (or POWs) would be considered a single POI or POW for the purpose of this Secondary Market transfer opportunity.

<sup>12</sup> See: OATT Section 19.7

termination date occurring after the one-year notice period. The NYISO proposes that this subsection also state affirmatively that any prohibited bid points expire as of the first Capability Period following the last termination date of the Incremental TCCs.

Finally, the NYISO, in newly renumbered Section 19.2.4.10, proposes to clarify that Outage Charges also travel with any assigned Incremental TCCs to the assignee. A conforming amendment is added to Section 20.1.1 (Attachment N), in the single paragraph that references Outage charges, to indicate that Outage charges apply to Expanders or their assignees.

#### **IV. Effective Date**

The NYISO proposes that these changes become sixty days after filing or February 21, 2014.

#### **V. Requisite Stakeholder Approval**

These amendments were approved unanimously with a show of hands at the NYISO Management Committee on September 30, 2013 and by the Board of Directors on November 19, 2013.

#### **VI. Communications and Correspondence**

All communications and service in this proceeding should be directed to:

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#### **VII. 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).

### **VIII. Conclusion**

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept for filing the proposed Tariff revisions that are attached hereto with an effective date of February 21, 2014.

Respectfully submitted,

/s/Mollie Lampi

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