

July 15, 2014

**By Electronic Delivery**

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

**Re: *New York Independent System Operator, Inc., Refiling of Base Tariff Section to Correct Ministerial Error, Request Correction to June 26 Filing, and Request for Waiver of Public Notice and Comment Procedures; Docket No. ER13-1380-\_\_\_***

Dear Ms. Bose:

It has recently come to the New York Independent System Operator's ("NYISO") attention that due to an administrative oversight, the tariff section base document used to create the clean and blacklined versions of Section 23 of (Attachment H to) the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") that were included in the June 26 Filing<sup>1</sup> in the above referenced docket was incorrect. Upon investigation, the NYISO confirmed that the administrative oversight dates back to its original "baseline" eTariff filing in 2010. The NYISO has also identified a number of earlier eTariff filings that used the same incorrect base document.<sup>2</sup> The NYISO is submitting this filing to correct its Services Tariff to accurately reflect the Services Tariff language that the Commission has previously accepted, and to incorporate that correction in the language proposed in the June 26 Filing. Making this correction does not impact the substance of the June 26 Filing, or the merits of the issue that prompted the Commission to direct the NYISO to submit it. Therefore, the NYISO is resubmitting a corrected, clean version of the June 26 Filing's proposed revisions to ensure the accuracy of the Services Tariff. As shown below, this change does not substantively amend the June 26 Filing. The NYISO believes that this filing obviates any need for additional action on earlier filings, including those that are still pending before the Commission.

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<sup>1</sup> New York Independent System Operator, Inc., *Compliance Filing*, Docket No. ER13-1380-004 (June 26, 2014) ("June 26 Filing").

<sup>2</sup> These filings are identified in Attachment I to this filing.

## I. LIST OF DOCUMENTS SUBMITTED

1. This transmittal letter;
2. A list of earlier filings in which the version of Section 23.4 of the Services Tariff that was used to create the filing included the error that this filing addresses (“Attachment I”);
3. A corrected redline version of Section 23.4 of the Services Tariff incorporating the inadvertently omitted language in the revisions proposed in the June 26 Filing (“Attachment II”); and
4. A corrected clean version of Section 23.4 of the Services Tariff with the revisions proposed in the June 26 Filing (“Attachment III”).

## II. MINISTERIAL CORRECTION TO BASE TARIFF SECTION 23.4.5.5

The NYISO has determined that a number of its prior filings, including the June 26 Filing, include a version of Section 23.4.5.5 of the Services Tariff that inadvertently omits language that was previously accepted by the Commission. Specifically, in its May 2010 Order in Docket No. EL07-39-004, *et al.*<sup>3</sup> the Commission accepted the blacklined tariff language below:

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. The presumption of Control from ownership can be rebutted by either: (1) the sale of Unforced Capacity from the Installed Capacity Supplier in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO **that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition**; provided, however, that if the presumption has not been rebutted, and if two or more Market Parties each have rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of

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<sup>3</sup> *New York Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,170 at P 59 (2010) (accepting compliance tariff revisions that the NYISO had proposed in an October 30, 2008 compliance filing in Docket Nos. EL07-39-005 and ER08-695-003) (“May 2010 Order”). The NYISO notes that the October 2008 compliance filing included language in clause (2) specifying that the NYISO would review attempts to rebut the presumption of Control in “in consultation with the Market Advisor . . . .” The language referencing consultation with the Market Advisor was subsequently removed by a May 15, 2009 filing in Docket No. ER09-1142-000, is not relevant to this filing, and is not referenced again herein.

the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O.

This language appears to have first been inadvertently omitted in the NYISO's June 30, 2010 baseline eTariff filing that was submitted in compliance with Order No. 714 in Docket No. ER10-1657-000. It appears that this erroneous omission was then replicated in multiple subsequent filings that included unrelated changes to Section 23.4. A list of these filings is included in Attachment I.

The NYISO is proposing to restore accepted tariff language that has been inadvertently omitted from the Services Tariff since 2010. That restoration is not a change to the accepted version of Services Tariff. Restoring the missing phrase, *i.e.*, "that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition; . . . ," will simply bring back the language explaining what must be shown to the NYISO's "reasonable satisfaction" that was accepted by the May 2010 Order.

The Commission has previously permitted filing entities to correct errors in filed tariff sheets after the issuance of an order accepting the tariff revisions for filing.<sup>4</sup> Accepting this filing would be consistent with that precedent.

Upon eTariff confirmation of the Commission's receipt and eTariff acceptance of this filing and the other errata filings, the NYISO will post to its website the corrected version of Services Tariff Section 23 that restores the language blacklined above to Section 23.4.5.5. In this manner, all stakeholders will have immediate access to the correct and currently effective Services Tariff provisions.

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<sup>4</sup> See, e.g., *New York Independent System Operator, Inc., Letter Order*, Docket No. ER09-1027-001 (Sept. 24, 2009) (accepting revised tariff sheets to reinstate erroneously omitted language several months after the Commission's acceptance of the tariff revisions that contained the erroneous omission); *New York Independent System Operator, Inc., Letter Order*, Docket Nos. ER04-230-037 and ER04-230-038 (Sept. 5, 2008) (accepting corrected tariff sheets that reinstated erroneously omitted language and corrected the table of contents several months after the Commission's acceptance of the tariff revisions that contained errors).

### III. REQUESTED CORRECTION TO THE JUNE 26 FILING

The June 26 Filing proposed the following revision in compliance with the May 27, 2014 *Order on Rehearing* (the “Rehearing Order”):<sup>5</sup>

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. **For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone except the G-J Locality, the presumption of Control of Unforced Capacity ownership can be rebutted by either: (1) the sale of Unforced Capacity from the Installed Capacity Supplier in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction. For any Mitigated Capacity Zone,** provided, however, that if the presumption has not been rebutted, and if two or more Market Parties each have rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O.

Thus, the June 26 Filing, like the earlier filings referenced in Section II above, inadvertently omitted from clause (2) of Section 23.4.5.5 the language describing what must be shown to rebut the presumption of Control. In addition, it did not incorporate that phrase in its proposed new language that applies to the G-J Locality. The NYISO would have included the missing phrase in the June 26 Filing’s new language if it had known at the time that it was accepted tariff language that had been inadvertently omitted from the eTariff and from earlier filings. It should be readily apparent that the June 26 Filing was intended to propose parallel language governing the rebuttal of the presumption of Control for the G-J Locality and for the other Mitigated Capacity Zones<sup>6</sup> (other than the G-J Locality), except for the elimination of the

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<sup>5</sup> *New York Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,152 (2014).

<sup>6</sup> Presently, the only Mitigated Capacity Zones are the G-J Locality and New York City.

“forward capacity sales exclusion” in the former (which was required by the Rehearing Order).<sup>7</sup> Restoring the missing phrase in both places where the NYISO’s “reasonable satisfaction” is mentioned is thus not a substantive change but an administrative correction and clarification.

Accordingly, the NYISO requests the Commission’s permission to make a ministerial correction to its June 26 Filing. The first ministerial correction is that shown above, to include the inadvertently omitted language in clause (2). That is the language that would have existed had the correct base etariff been in place at the time. The second ministerial correction is where the missing phrase should have been repeated so that the changes proposed in the June 26 Filing are consistent with the accepted version of Section 23.4.5.5. Specifically, and as set out below and on Attachment II, the NYISO requests that the Commission permit it to add the language highlighted below to the revisions proposed in the June 26 Filing.

23.4.5.5 Control of Unforced Capacity shall be rebuttably presumed from (i) ownership of an Installed Capacity Supplier, or (ii) status as the Responsible Market Party for an Installed Capacity Supplier, but may also be determined on the basis of other evidence. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in a Mitigated Capacity Zone except the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by: (1) the sale of Unforced Capacity from the Installed Capacity Supplier in a Capability Period Auction or a Monthly Auction, or (2) demonstrating to the reasonable satisfaction of the ISO that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition. For purposes of determining if a Responsible Market Party is a Pivotal Supplier in the G-J Locality, the presumption of Control of Unforced Capacity can be rebutted by demonstrating to the reasonable satisfaction of the ISO **that the ability to determine the price and quantity of offers to supply Unforced Capacity has been conveyed to a person or entity that is not an Affiliated Entity without limitation or condition**, but cannot be rebutted by the sale of Unforced Capacity in a Capability Period or Monthly Auction. For any Mitigated Capacity Zone, if the presumption has not been rebutted, and if two or more Market Parties each have rights or obligations with respect to Unforced Capacity from an Installed Capacity Supplier that could reasonably be anticipated to affect the quantity or price of Unforced Capacity transactions in an ICAP Spot Market Auction, the ISO may attribute Control of the affected MW of Unforced Capacity from the Installed Capacity Supplier to each such Market Party. Prior to reaching its decision regarding whether the presumption of control of Unforced Capacity has been rebutted, the ISO shall provide its preliminary determination to the Market Monitoring Unit for review and comment. The responsibilities of the Market Monitoring Unit that are addressed in this section of the Mitigation Measures are also addressed in Section 30.4.6.2.9 of Attachment O.

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<sup>7</sup> See Rehearing Order at P 37 and n. 75.

#### **IV. REQUEST FOR WAIVER**

The NYISO does not believe that the correction to the currently effective version of its Services Tariff described in Section II requires a public notice. Nevertheless, to the extent that the Commission determines that its notice and comment procedures might apply to that correction the NYISO respectfully asks that the Commission waive them.

Similarly, although the Commission might deem the proposed correction to the June 26 Filing described in Section III above as an amendment to that filing that would trigger a new notice, the NYISO respectfully asks that the Commission exercise its discretion to waive its notice and comment procedures. The proposed corrections to the June 26 Filing are non-substantive and ministerial. They simply restore language that the Commission originally accepted in 2010 and which would have been included in the June 26 Filing if the NYISO had been aware of that language's inadvertent omission from earlier filings. Alternatively, given this filing's ministerial character, the Commission should adopt the shortest permissible notice and comment period and limit any comments to the specific corrections proposed in Section III.

#### **V. REQUESTED EFFECTIVE DATE**

As noted above, the NYISO believes that the correction proposed in Section II above will become effective immediately. The NYISO respectfully requests that the correction proposed in Section III become effective on the same date as the compliance revision proposed in the June 26 Filing, *i.e.*, on March 23, 2015 or as further described therein.

#### **VI. SERVICE**

This filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com). In addition, the NYISO will e-mail an electronic link to this filing to the official representative of each party to this proceeding, to 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.

#### **VII. CONCLUSION**

For the reasons set forth above, the NYISO respectfully requests that the Commission accept the tariff corrections proposed herein. Please do not hesitate to contact the undersigned should you have any questions regarding this letter or the attached Services Tariff revisions.

Ms. Kimberly D. Bose, Secretary  
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Respectfully submitted,

*/s/ Gloria Kavanah*  
Gloria Kavanah  
Senior Attorney  
New York Independent System Operator, Inc.

Dated: July 15, 2014

cc: Michael A. Bardee  
Gregory Berson  
Anna Cochrane  
Jignasa Gadani  
Morris Margolis  
Michael McLaughlin  
David Morenoff  
Daniel Nowak

## **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 Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 15<sup>th</sup> day of July, 2014.

*/s/ Joy A. Zimmerlin*

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