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October 5, 2011

**By Electronic Delivery**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street N.E.  
Washington, D.C. 20426

**Re: New York Independent System Operator, Inc.'s Proposed Tariff Revisions  
Regarding its Dispute Resolution Provisions; Docket No. \_\_\_\_\_**

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) hereby submits revised tariff sections for its Market Administration and Control Area Services Tariff (“Services Tariff”), its Open Access Transmission Tariff (“OATT”), and its Independent System Operator Agreement (“ISO Agreement”) to revise and clarify the NYISO’s dispute resolution provisions in its tariffs and the ISO Agreement.<sup>2</sup> The dispute resolution provisions in the NYISO tariffs and the ISO Agreement establish a mechanism for the NYISO and its market participants to resolve certain disputes arising under the NYISO tariffs.

The NYISO recently conducted an internal review of the dispute resolution provisions in its tariffs and the ISO Agreement and identified opportunities to improve and clarify the existing dispute resolution processes.<sup>3</sup> The NYISO proposes to revise the dispute resolution provisions to make such clarifications and improvements as described in Section IV below. These proposed revisions were approved with abstentions by the NYISO stakeholders’ Management Committee on May 25, 2011, and by the NYISO Board of Directors on July 18, 2011.

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<sup>1</sup> 16 U.S.C. § 824d.

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

<sup>3</sup> The NYISO conducted this internal review and is making this filing as part of an ongoing comprehensive review of its tariffs to identify opportunities to improve and clarify them.

## **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 ISO Agreement (“Attachment I”); and
3. A blacklined version of the proposed revisions to the ISO Agreement (“Attachment II”).

The proposed revisions to the ISO Agreement are part of a package of revisions to the dispute resolution provisions in the ISO Tariffs and ISO Related Agreements. Earlier today, the NYISO submitted, in the same docket, proposed revisions to the OATT and Services Tariff. As stated in that filing, the NYISO is making this supplemental filing because the NYISO is unable to electronically submit proposed revisions to the ISO Related Agreements at the same time as it electronically submits proposed revisions to the ISO Tariffs due to technical restrictions imposed by the eTariff system. This filing letter, with the exception of this Section I, is identical to the filing letter submitted earlier today.

## **II. Copies of Correspondence**

Copies of correspondence concerning this filing should be served on:

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<sup>4</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2008) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, VA.

### **III. Service List**

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, a complete version of this filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

### **IV. Description of Proposed Revisions**

Section 11 of the Services Tariff, Section 2.16 of the OATT, and Article 10 of the ISO Agreement establish a general purpose dispute resolution process that applies to most disputes that arise under the NYISO tariffs ("General Dispute Resolution Process"). Pursuant to this process, parties to a dispute first attempt to resolve the dispute informally, during a thirty-day discussion period. If they remain unable to resolve their dispute, one of the parties may submit the dispute to the NYISO's Dispute Resolution Administrator, who administers the General Dispute Resolution Process. The Dispute Resolution Administrator is responsible for maintaining a list of ten qualified mediators and ten qualified arbitrators, from which the disputing parties select a mediator or arbitrator. Once a mediator or arbitrator is selected, the Tariff provides that mediation or arbitration will last up to ninety days. In practice this period may be extended if the process set by the mediator or the arbitrator has not been completed. The results of an arbitration will be final and binding if all parties agree that the results should be final and binding or if the dispute concerns an amount less than \$500,000.

In addition to this General Dispute Resolution Process, the NYISO tariffs establish several subject-matter specific dispute resolution processes ("Special Dispute Resolution Processes"). These Special Dispute Resolution Processes apply in limited circumstances in which (i) a dispute must be resolved in an expedited manner to enable the NYISO or a market participant to perform its tariff obligations within the tariff-specified timeframes or (ii) a dispute must be resolved in accordance with specific processes agreed-upon by the NYISO and market participants. For example, Section 7.4.3 of the Services Tariff and Section 2.7.4.4 of the OATT establish an expedited dispute resolution process to enable the NYISO and a market participant to resolve certain disputes regarding the market participant's settlement data within the timeframe specified in the NYISO tariffs for the review and finalization of customer settlements.

The NYISO proposes to revise the General Dispute Resolution Process and the Special Dispute Resolution Processes set forth in its tariffs and the ISO Agreement as described in this Section IV.<sup>5</sup>

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<sup>5</sup> The NYISO notes that the existing dispute resolution provisions in its tariffs contain certain variations from the dispute resolution provisions in the *pro forma* OATT that have been accepted by the Commission as the variations are consistent with or superior to the *pro forma* provisions. The proposed revisions in this filing simply improve upon and clarify the dispute resolution provisions previously accepted by the Commission.

**A. Proposed Revisions to Improve the Organization of the General Dispute Resolution Process in the NYISO Tariffs and ISO Agreement**

Section 11 of the Services Tariff, Section 2.16 of the OATT, and Article 10 of the ISO Agreement establish the General Dispute Resolution Process. These provisions in the NYISO tariffs and the ISO Agreement contain similar, but not identical, requirements for the General Dispute Resolution Process. The NYISO proposes to consolidate all of these requirements into Section 11 of the Services Tariff to ensure consistency among the tariffs and the ISO Agreement. The proposed revisions will enable the NYISO to avoid any errors that may arise from its tariffs and the ISO Agreement establishing similar, but not identical, dispute resolution processes.

To accommodate this revision, the NYISO proposes to replace the requirements for the General Dispute Resolution Process in Section 2.16 of the OATT with a cross-reference to Section 11 of the Services Tariff. In addition, the NYISO proposes to revise Article 10 of the ISO Agreement to replace the requirements for the General Dispute Resolution Process with a provision requiring the NYISO to include a dispute resolution process in its Services Tariff and a description of the principal elements of that process.

**B. Proposed Revisions to the Scope of the General Dispute Resolution Process**

Section 11.1 of the Services Tariff currently provides that the General Dispute Resolution Process applies to any dispute arising under the NYISO tariffs. The NYISO proposes to clarify in a new Section 11.1.1 that the General Dispute Resolution Process applies to a dispute involving service under the NYISO tariffs, procedures, or any agreement entered into under the NYISO tariffs. In addition, the NYISO proposes to include a new Section 11.1.2 that expressly excludes certain disputes from the application of the General Dispute Resolution Process. The excluded disputes include:

- (i) disputes that are separately addressed through the Special Dispute Resolution Processes in the NYISO tariffs;
- (ii) disputes concerning applications for changes to the NYISO's tariffs, procedures, or agreements; and
- (iii) disputes that could result in an obligation for an entity to transmit electricity under circumstances where the Commission is precluded from ordering transmission service pursuant to Section 212(h) of the Federal Power Act.<sup>6</sup>

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<sup>6</sup> The exclusion from these Section 11 Dispute Resolution Procedures for these disputes is found in Sections 11.1.2 and 11.9 of the revised Section 11.

**C. Proposed Revisions to Provide Disputing Parties with Additional Control and Flexibility Over the General Dispute Resolution Process**

The existing General Dispute Resolution Process could be read to require the NYISO or a market participant to take part in a mediation or arbitration initiated by one of the disputing parties to resolve a dispute that should more appropriately be addressed at the Commission or a court of competent jurisdiction. A dispute that concerns, for example, the interpretation of a NYISO tariff provision could have a broader impact than simply resolving the immediate dispute and could potentially affect market participants that are not involved in the immediate dispute or parties to the resulting mediation or arbitration. In such cases, the NYISO or a market participant should have the opportunity to bring the dispute to the Commission, where all potentially affected parties can participate in the proceeding and the impacts resulting from the interpretation of the NYISO tariffs can be clearly determined. The NYISO or a market participant could also be required under the existing General Dispute Resolution Process to participate in a potentially expensive non-binding mediation or an arbitration process in which the parties are unlikely to resolve the dispute or may be bound by the results of a proceeding that the party did not wish to pursue (e.g., arbitration regarding a matter under \$500,000). For these reasons, the NYISO proposes to revise Section 11 (in a new Section 11.4 of the Services Tariff) to provide that the parties to a dispute must mutually agree in writing to commence a mediation or an arbitration. If the parties cannot agree that the matter should be addressed through a mediation or an arbitration, either party may bring the matter to the Commission or a court of competent jurisdiction. Similarly, the NYISO proposes to revise Section 11 (in a new Section 11.6 of the Services Tariff) to provide that the results of an arbitration will only be final and binding on the parties if the parties mutually agree in writing that the results will be final and binding.

In addition, the General Dispute Resolution Process currently requires the appointment of a Dispute Resolution Administrator, who is responsible for selecting whether a dispute should be submitted to mediation or arbitration, for maintaining the list of qualified mediators or arbitrators, and for administering the dispute resolution process. The NYISO proposes to revise Section 11 to eliminate the role of the Dispute Resolution Administrator in the General Dispute Resolution Process. Instead, the parties to a dispute will by mutual agreement make the administrative determinations regarding a dispute resolution proceeding, including:

- (i) As described above, pursuant to the proposed Section 11.4 of the Services Tariff, parties to a dispute that are unable to resolve a dispute through informal discussions must mutually agree in writing to submit all or a part of a dispute to mediation or arbitration. A party may, in the alternative, take no action or commence a legal proceeding before the Commission or court of competent jurisdiction. If the parties have, however, agreed upon mediation, they cannot commence an arbitration or a legal proceeding prior to the conclusion of the mediation, except as necessary to preserve a claim subject to expiration under the applicable statute of limitations.

(ii) Pursuant to the proposed Sections 11.5.1 and 11.6.1.1 of the Services Tariff, parties that have agreed to enter into mediation or arbitration will exchange a list of proposed mediators or arbitrators and will seek mutual agreement on an acceptable neutral. If the parties are unable to reach an agreement, they will request the assistance of the Commission's Dispute Resolution Service in selecting a neutral.

(iii) Pursuant to the proposed Sections 11.5 and 11.6 of the Services Tariff, the parties will determine by mutual agreement in writing to either use the standard procedures for a mediation or arbitration that are set forth in Sections 11.5 and 11.6 or to adopt alternative procedures that are agreeable to all parties to the dispute.

#### **D. Additional Proposed Revisions to the Procedures for the General Dispute Resolution Process**

As part of its review of the General Dispute Resolution Process requirements, the NYISO identified additional opportunities to improve and clarify these requirements, including:

(i) Section 11.2 of the Services Tariff establishes the procedures for initiating a dispute resolution process. The NYISO proposes in a new Section 11.2.1 to provide additional detail regarding the requirements to initiate a dispute resolution process. Specifically, a party will be required to submit written notice to the NYISO to initiate a dispute resolution process that describes the dispute in detail, sets forth the legal and factual assertions, and designates the representatives that will participate in the proceeding.

(ii) The NYISO proposes a new Section 11.2.2 of the Services Tariff that clarifies that the NYISO will be a party to any dispute resolution proceeding initiated under Section 11.

(iii) Section 11.2 of the Services Tariff provides for informal discussions among the disputing parties to attempt to resolve a dispute. The NYISO proposes to revise this provision (in new Section 11.3) to clarify that each party must act in good faith to attempt to resolve the dispute through the informal discussions.

(iv) Section 11.3 of the Services Tariff indicates what actions a mediator may require of the parties taking part in a mediation. The NYISO proposes to revise this provision (in new Section 11.5.2) to replace the requirement that a party may be required to "provide expert testimony and exhibits" with a requirement that the parties may be required to submit "supporting documents or affidavits."

(v) Section 11.3 of the Services Tariff currently provides that each party to a dispute will bear a "*pro rata* portion" of the costs associated with a mediator. The NYISO proposes to clarify the meaning of this provision (in new Section 11.5.3) by replacing the term "*pro rata* portion" with "equal share" of the costs.

(vi) Section 11.4 of the Services Tariff provides that if an arbitrator concludes that no proposed award would address all issues in dispute, the arbitrator shall develop a compromise

solution. The NYISO proposes to clarify (in new Section 11.6.2) that the arbitrator may also determine that no award is available.

(vii) In addition, Section 11.4 of the Services Tariff provides that an arbitrator shall provide a written decision explaining the basis of an award. The NYISO proposes to clarify (in new Section 11.6.2) that the arbitrator shall provide a written decision regardless of the arbitrator's determination, and such written decision will include a finding of fact and the basis for any compromise award, or, if no award is available, the basis for the decision that no award was available.

(viii) The NYISO proposes to include a new Section 11.7 of the Services Tariff to provide that, upon the written consent of all parties to separate pending arbitration proceedings, the separate proceedings may be consolidated if they concern the same factual issues and are governed by the same legal provisions. The proposed revisions specify that an arbitration proceeding, which results the parties have agreed will be final and binding, may only be consolidated with another proceeding which results will be final and binding. In addition, a party that agrees to consolidate its proceeding may not challenge the final award on the ground that it was harmed by the consolidation of proceedings.

(ix) The NYISO proposes to include a new Section 11.8 to clarify that the pendency of a dispute resolution proceeding under Section 11 will not relieve a party of any duty to perform its obligations under the NYISO tariffs, procedures, or agreements.

#### **E. Proposed Revisions to the Dispute Resolution Requirements in the NYISO Market Monitoring and Mitigation Provisions**

The NYISO identified the following opportunities to improve and clarify the dispute resolution requirements in the NYISO's market monitoring and mitigation tariff provisions:

(i) The NYISO proposes to clarify the dispute resolution provisions in Sections 30.6.2.3.3 and 30.12 of the NYISO's Market Monitoring Plan in Attachment O of the Services Tariff to replace the reference to the General Dispute Resolution Process in the ISO Agreement with a reference to the general Dispute Resolution Procedures in the Services Tariff. In addition, the NYISO proposes to revise Section 30.6.2.3.3 to clarify that the disputing parties may, but are not required to, seek binding arbitration and expedited treatment of disputes related to providing the NYISO with certain information requested by the NYISO for market monitoring or mitigation purposes. The NYISO also proposes to revise Section 30.6.2.3.3 to provide that it may initiate a judicial or regulatory proceeding to compel the production of the requested information at any time.

(ii) The NYISO proposes to clarify the dispute resolution provisions in Sections 23.4.3.5 and 23.6 of the NYISO's Market Mitigation Measures in Attachment H of the Services Tariff to replace the references to dispute resolution provisions in Attachments H and O of the Services Tariff and the references to the General Dispute Resolution Process in the ISO Agreement with a reference to the general Dispute Resolution Procedures in the Services Tariff.

## **F. Additional Proposed Clarifications**

- (i) While the Dispute Resolution Administrator will no longer perform a role in the general Dispute Resolution Procedures, the Dispute Resolution Administrator will continue to administer the expedited dispute resolution process for certain Installed Capacity related disputes as set forth in Section 5.16 of the Service Tariff. For this reason, the NYISO proposes to remove the definition of “Dispute Resolution Administrator” from Section 1 of the OATT and Article 1 of the ISO Agreement and to revise the definition in Section 2 of the Services Tariff to clarify that the Dispute Resolution Administrator administers the expedited dispute resolution process set forth in Section 5.16 of the Services Tariff. In addition, the NYISO proposes to remove the defined term “Dispute Resolution Process” from Section 1 of the OATT, Article 1 of the ISO Agreement, and Section 2 of the Services Tariff because the defined term will no longer be used in the NYISO tariffs and agreements.
- (ii) The NYISO proposes to revise Section 31.1.3.4 of Attachment Y of the NYISO OATT regarding disputes concerning the New York Comprehensive System Planning Process to clarify that the dispute resolution provisions in the OATT are located in “Section 2.16” of the OATT (rather than “Section 12.16” of the OATT) and to include a reference to the general Dispute Resolution Procedures in the Services Tariff.
- (iii) The NYISO also proposes general, non-substantive drafting improvements. For example, the NYISO proposes to create certain defined terms in Section 11 of the Service Tariff (e.g., “Party,” “Dispute Resolution Proceeding”) and to use such terms throughout Section 11.

## **V. Effective Date**

The NYISO respectfully requests that this filing become effective sixty (60) days after the date of this filing.

## **VI. Requisite Stakeholder Approval**

The tariff revisions proposed in this filing were discussed with stakeholders in the NYISO’s Market Issues Working Group on March 14, 2011, and April 15, 2011. The revisions were passed unanimously by show of hands with abstentions at the NYISO’s Business Issues Committee meeting on May 3, 2011, and approved with abstentions at the NYISO’s Management Committee meeting on May 25, 2011. On July 18, 2011, the NYISO’s Board of Directors also approved these tariff revisions.

**VII. 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/ Ted J. Murphy  
Ted J. Murphy  
Counsel for  
New York Independent System Operator, Inc.

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