

September 7, 2012

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. ER12-____-000;
Proposed Tariff Amendments to Resolve Shortfalls in Funding the NYISO's
Annual Operating Costs**

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, the New York Independent System Operator, Inc. ("NYISO") respectfully submits proposed revisions to Rate Schedule 1 of its Open Access Transmission Tariff ("OATT"). These proposed revisions will enable the NYISO to access additional funds, when needed, in order to resolve shortfalls in revenues recovered from its Transmission Customers to fund the NYISO's annual operating costs and Commission-assessed regulatory fees ("Operating Costs" or "budget").¹

The NYISO currently recovers its Operating Costs through a rate charged its Transmission Customers for each MWh of energy they either physically withdraw or physically inject in New York ("physical market activity"). Those withdrawing energy ("Loads") pay 72% of the rate charged and those injecting energy ("Generators") pay 28% of the rate charged.² The NYISO separately recovers Operating Cost contributions from Transmission Customers that: i) engage in virtual transactions; ii) purchase Transmission Congestion Contracts; iii) are Special Case Resources; or iv) participate in the Emergency Demand Response Program (together referenced as "non-physical market activity").³ The OATT currently requires the NYISO to rebate the funds it collects from non-physical market activity back to Loads and Generators on a 72 percent / 28 percent basis as an offset to their Operating Cost contributions.⁴

¹ Because the NYISO is a not-for-profit corporation, it has no retained earnings to fund budget-year revenue shortfalls and depends entirely on the revenue it recovers annually from the Operating Cost reimbursement rate it charges certain customers to cover its costs of operation.

² OATT Section 6.1.2.2. Capitalized terms not otherwise defined herein shall have the meaning specified in Section 1 of the OATT.

³ See: OATT Section 6.1.2.4 which sets forth specific rates for each of these activities.

⁴ OATT Sections 6.1.2.4, 6.1.2.5

The rate charged for physical market activity is developed annually for the following budget year through a joint NYISO / stakeholder process. The NYISO and its Market Participants review the next-year Operating Cost budget and utilize a forecast of energy use for the following year to develop a rate/MWH that will recover the NYISO's Operating Costs in their entirety. The sufficiency of the rate to recover all annual Operating Costs, however, depends on the extent to which the forecast of energy use for the budget year is on target with actual consumption.

In those years when budget-year energy consumption is less than forecast, the NYISO is unable to fully recover its Operating Costs.⁵ The NYISO closely monitors energy consumption during the budget-year and when it appears a budget-revenue shortfall may occur, it works with its Market Participants to reduce already budgeted expenses, to the extent it can, and otherwise develop solutions which have, in the past, included a rate increase assessed on physical market activity for the balance of the budget-year. Given the difficult economic situation over the past several years, there is growing uncertainty, year-to-year, that the rate will be sufficient to fully fund the NYISO's Operating Costs.⁶

To avoid the hardships that mid-year programmatic cost reductions and budget revenue rate increases can cause for the NYISO and its Customers, the NYISO has worked with its Market Participants to develop this proposal. As is explained in greater detail below, the proposal would credit Operating Cost contributions collected from Customers engaged in nonphysical market activity first to the NYISO to resolve previous years' revenue budget shortfalls, if any. Once such budget shortfalls have been fully recovered, the NYISO would resume rebating these non-physical market revenues, for the balance of the budget-year, to Customers in the NYISO's physical market on a 72% / 28% basis.

These proposed tariff amendments have been approved unanimously, with abstentions, 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").

⁵ When budget-year market activity exceeds forecast, the NYISO discusses the appropriate use for the revenue overrun with its Market Participants and either includes the overage as additional revenue in the subsequent year or uses it to pay down debt.

⁶ The NYISO is again experiencing significant revenue under-runs for 2012 as is discussed in detail at page 4.

II. Background and Justification

The NYISO recovers its Operating Costs through a rate levied for each billing period on Transmission Customers' physical market activity.⁷ The OATT requires that the NYISO assess 72% of the rate on each MWH of energy withdrawn and 28% of the rate on each MWH of energy injected, reflecting the tariff-specified responsibility for Operating Costs assigned to Loads and and Generators.⁸

The annual Operating Cost budget is established through a multi-month collaborative NYISO / stakeholder process which includes a review of the NYISO's projected Operating Costs, and forecast of wholesale energy sales, for the following year. By assuming that actual energy usage in the budget year will at least equal the forecasted sales, the NYISO then sets a rate to be charged to Loads and Suppliers that would be sufficient to recover all of the next-year's Operating Costs.

Separately, the NYISO recovers contributions towards its Operating Costs from Transmission Customers engaged in non-physical market activity. The rates charged for each of the four separate market activities mentioned on page 1 are set forth in Rate Schedule 1 which also stipulates that the recoveries from this non-physical market activity are to be rebated on a monthly basis to customers with physical market activity in the same proportions that their ISO budget contributions are assessed (*i.e.* 28% of the recovered funds are allocated to Generators and 72% to Loads) based on their injections and withdrawals that month.⁹

The NYISO will recover all of its Operating Costs, however, only if actual physical market activity in the budget year equals (or exceeds) the market activity forecast for the budget year. While the NYISO uses a conservative forecasting process, recent years' physical market activity has been less than forecast and the NYISO has faced shortfalls in the revenue necessary to cover its budget.

In 2009, the NYISO and its Market Participants spent several months discussing alternatives to resolve a 2009 projected year-end budget revenue shortfall of \$3.5 million.¹⁰ In the end, a combination of reductions in NYISO expenses and a rate increase on physical market

⁷ OATT Section 6.1.2.2

⁸ *Id.* See: 137 FERC ¶ 61,240 (2011) wherein the NYISO's proposal to assign 28% of Operating Costs to generators and 72% to loads was accepted.

⁹ OATT Sections 6.1.2.4, 6.1.2.5

¹⁰ See: *Presentation* describing the need for an increase in the Operating Cost reimbursement rate at: http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-09-30/agenda_07_presentation_on_2009_Shortfall_Options.pdf and *Final Minutes* of the Management Committee meeting at which the interim rate increase was adopted http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-09-30/agenda_07_presentation_on_2009_Shortfall_Options.pdf Final Minutes http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-09-30/MC_Meeting_Minutes_09_30_09_final.pdf

activity was approved. The final resolution to increase the Operating Cost reimbursement rate charged to physical market activity, while approved by a 70% vote, and adopted by the NYISO Board of Directors, was not supported unanimously. Moreover, the ability for the NYISO to reduce its expenditures is limited. For instance, costs related to project commitments that are necessary to comply with Commission orders, the costs of computer and software infrastructure and maintenance and licensing fees, and the cost of FERC Fees, which the NYISO funds as an Operating Cost, cannot be reduced. Even when project commitment costs are not tied to Commission directives or other non-discretionary expenses, a decision to reduce or eliminate them often simply delays to the following year market enhancements that would have benefitted customers immediately by improving market efficiencies.

These are recurring issues. By March of 2012, the NYISO was again seeing budget revenue shortfalls develop¹¹ and by the end of June, the NYISO faced a then-projected shortfall of \$2.5 - \$3.0 million for the year. Although energy withdrawals in July exceeded forecast, the NYISO remains nearly \$2 million short in budget revenue from physical market activity.¹² To permanently resolve this issue and avoid *ad hoc* solutions that need to be developed annually, the Management Committee approved the proposal contained herein at its July 25, 2012 meeting.

The NYISO is proposing, in any calendar year, to first use revenue collected from Transmission Customers with non-physical market activity to offset previous year shortfalls in Operating Cost recoveries. For instance, if the revenue recovered from Transmission Customers with physical market activity in 2012 is insufficient to completely fund the NYISO's 2012 Operating Costs, the NYISO will end the year with a budget shortfall. If this proposal is accepted, the NYISO would, starting in January 2013, credit to its 2012 budget shortfall the funds it recovers from Transmission Customers with non-physical market activity in 2013.¹³ Once the 2012 budget shortfall has been erased, the funds collected from Transmission Customers with non-physical market activity will again be rebated to Transmission Customers with 2013 physical market activity on a 72% / 28% basis for the remainder of the year.

The NYISO's proposal is reasonable.¹⁴ The proposed amendments will ensure that the rates charged NYISO's Transmission Customers to fund the NYISO's Operating Costs will remain stable and not increase mid-year. This will allow them to build this rate into their cost of

¹¹ See: *Presentation* at http://www.nyiso.com/public/webdocs/committees/mc_bpwg/meeting_materials/2012-04-23/04-23-12_BPWG_presentation_on_March_2012_budget_vs_actual_results.pdf

¹² See: *Presentation* to the August 22, 2012 Budget and Priorities Working Group at http://www.nyiso.com/public/webdocs/committees/mc_bpwg/meeting_materials/2012-08-22/082212_BPWG_presentation_on_July_2012_budget_vs_actual_results.pdf

¹³ Operating Cost contributions from Transmission Customers engaged in physical and non-physical market activity are collected monthly based on their activity that month.

¹⁴ Other ISOs have adopted true-up mechanisms in their administrative cost recovery rate designs. See for instance: ISO-New England's Transmission, Markets and Services Tariff Section IV.A.2.2 and Schedule 10 ISO Cost Recovery Adder Version: 2.0.0, Section II.A. from the MISO Tariff.

business without fear that the rate may increase before the year is over. The proposed amendments will also ensure that the NYISO can expect to recover all the funds it has budgeted to successfully maintain reliable operation of the bulk transmission system, run its energy, ancillary services, capacity and TCC markets efficiently, pursue market design enhancements to improve efficiency and transparency, and plan for New York's future electric needs such that a continuing reliable supply of electricity is never in doubt. The NYISO's proposal will accomplish these goals without imposing any new or increased rates on any Transmission Customers.

III. Proposed Tariff Revisions

The NYISO proposes to amend Sections 6.1.2 and 6.1.2.5 of the OATT. The proposed amendments to Section 6.1.2 indicate (as underlined) that the NYISO will:

[U]se the revenue collected through Section 6.1.2.4 of this Rate Schedule 1 to fully recover any of its annual budgeted costs for the immediately preceding calendar year that it has not already recovered under Section 6.1.2.2 of this Rate Schedule for that year. The ISO shall credit any additional revenue collected through Section 6.1.2.4 of this Rate Schedule 1 for the remainder of the calendar year to each Transmission Customer on the basis of its physical market activity as indicated in Section 6.1.2.5 of this Rate Schedule 1.

The NYISO is proposing to amend OATT Section 6.1.2.5, which directs the manner in which the NYISO is to rebate funds recovered for non-physical market activity, (as underlined) to allow it to:

[U]se the revenue collected each Billing Period pursuant to Section 6.1.2.4 of this Rate Schedule 1 to fully recover any of its annual budgeted costs for the immediately preceding calendar year that it has not already recovered under Section 6.1.2.2 of this Rate Schedule for that year. Once it has fully recovered its annual budgeted costs for the immediately preceding calendar year, the ISO shall distribute each Billing Period for the remainder of the calendar year any additional revenue collected pursuant to Section 6.1.2.4 of this Rate Schedule to each Transmission Customer that participates in physical market activity as calculated according to the following formula.

The NYISO is also proposing to amend the defined term "NonPhysicalActivityRevenue_P" used in Section 6.1.2.5's rebate formula (as underlined) as follows:

This amount shall be \$0 for each Billing Period P until the ISO fully recovers through the charges to Transmission Customers pursuant to Section 6.1.2.4 of this Rate Schedule any of its annual budgeted costs for the immediately preceding calendar year that it has not already recovered under Section 6.1.2.2 of this Rate Schedule for that year. For each Billing Period P thereafter for the remainder of the calendar year, this amount shall be the

sum, in \$, of the revenue collected by the ISO for Billing Period P through the charges to Transmission Customers for non-physical market activity, the Special Cases Resource program, and the Emergency Demand Response program as calculated in Section 6.1.2.4 of this Rate Schedule 1

The NYISO is also proposing to amend Section 6.1.2.5 to indicate that in 2017 it intends to review the extent to which it has needed to utilize this budget revenue shortfall recovery mechanism and will present the results of its review to Market Participants for comment.

IV. Effective Date

The NYISO proposes that these amendments become effective January 1, 2013.

V. Requisite Stakeholder Approval

These amendments were approved by the NYISO Management Committee on July 25, 2012 and by the NYISO's Board of Directors on August 21, 2012.

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.

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 January 1, 2013.

Respectfully submitted,

/s/Mollie Lampi

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