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November 13, 2009

**Via Hand Delivery**

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

**Re: Joint Compliance Filing of the New York Independent System Operator, Inc. and  
the New York Transmission Owners, Docket No. ER04-449-\_\_\_**

Dear Secretary Bose:

Pursuant to the Commission's March 21, 2008 order ("March 2008 Order"),<sup>1</sup> January 15, 2009 order ("January 2009 Order"),<sup>2</sup> and the July 9, 2009 Notice of Extension of Time,<sup>3</sup> in the above captioned proceedings, the New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners ("NYTOs")<sup>4</sup> (collectively, the "Joint Filing Parties") hereby respectfully submit amendments to the NYISO's Open Access Transmission Tariff ("OATT") to implement a funding mechanism for recovery of that portion of the cost of Highway System Deliverability Upgrades ("Highway SDUs") which are

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<sup>1</sup> *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,267 at P 1 (2008) ("March 2008 Order").

<sup>2</sup> *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 (2009) ("January 2009 Order").

<sup>3</sup> *New York Independent System Operator, Inc.*, Notice of Extension of Time (issued July 9, 2009).

<sup>4</sup> Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. ("Con Edison"), LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc. ("O&R"), Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid. The NYTOs reserve the right to comment separately on this filing. While LIPA and NYPA are not "public utilities" as defined under Section 201 of the Federal Power Act, and thus are exempt from the requirement to file these tariff amendments, LIPA and NYPA were integrally involved with the FERC-jurisdictional NYTOs in the development of the instant filing and support its filing. The LIPA transmission system currently has no facilities classified as Highways under the NYISO OATT and, therefore, currently has no facilities covered by the new Rate Schedule 12 proposed in this filing. If any LIPA transmission facilities are in the future classified as Highways, the Joint Filing Parties will file with the Commission appropriate modifications to Rate Schedule 12.

allocated to Load Serving Entities (“LSEs”) and to distribute those revenues to the constructing Transmission Owners (“LSE Funding Mechanism”).

The Joint Filing parties submit that the tariff sheets proposed herein are just, reasonable, and not unduly discriminatory and thus respectfully request that the Commission accept them for filing.

## **I. LIST OF DOCUMENTS SUBMITTED**

The NYISO submits the following documents:

1. This filing letter;
2. A clean version of the modifications to Attachment S of the NYISO OATT (“Attachment I”);
3. A blacklined version of the modifications to Attachment S of the NYISO OATT (“Attachment II”);<sup>5</sup>
4. A clean version of the new OATT Rate Schedule 12 (“Attachment III”);
5. A blacklined version of the new OATT Rate Schedule 12 (“Attachment IV”); and
6. A List of Additional Individual Company Representatives for the NYTOs (“Attachment V”).

## **II. BACKGROUND**

On October 5, 2007, the Joint Filing Parties submitted the Consensus Deliverability Plan which proposed to provide an interconnecting Generator the choice of two categories of interconnection service: (1) Energy Resource Interconnection Service (“ERIS”); and (2) Capacity Resource Interconnection Service (“CRIS”). One aspect of the plan concerned cost allocation for upgrades of 115 kV and higher transmission facilities (“Highways”). The Consensus Deliverability Plan proposed to allocate to the Developer the full costs of upgrades necessary to make a Developer’s capacity request deliverable, except in certain circumstances where the Developer’s project would use less than 90 percent of the capacity of the required upgrade. Where the Developer’s project would use less than 90 percent of the capacity of the required upgrade and the Developer has agreed to fund at least 60% of that upgrade, the Consensus Deliverability Plan proposed to allocate the excess costs to LSEs.<sup>6</sup> The

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<sup>5</sup> Based on past informal discussions with Commission staff, the blacklined tariff sheets attached hereto are marked to indicate the proposed tariff revisions contrasted against the most recent version of the tariff sheets being considered by the Commission. The NYISO respectfully requests waiver of 18 C.F.R. § 35.10(b) (2009) to the extent the blacklined tariff sheets deviate from the requirements of the Commission’s regulations. The NYISO notes that some of the OATT Attachment S tariff sheets affected by this filing contain changes currently pending before the Commission in Docket Nos. ER04-449-000, *et al.*

Commission's March 2008 Order accepted the Joint Filing Parties' Consensus Deliverability Plan.

On August 5, 2008, the Joint Filing Parties filed their proposed amendments to the NYISO tariffs to implement the Consensus Deliverability Plan ("Deliverability Filing"). The Deliverability Filing included proposed tariff revisions to implement the LSE cost allocation process for Highway SDUs. However, the Joint Filing Parties noted that more work was necessary with respect to the specific mechanism to be used to collect and distribute LSE funds to constructing Transmission Owners and to reflect subsequent Headroom payments. The Deliverability Filing requested that the Commission grant them six months of additional time to complete their analysis and make a subsequent compliance filing.

On January 15, 2009, the Commission conditionally accepted the Deliverability Filing including the LSE cost allocation proposal, directed further compliance filings and granted the Joint Filing Parties the requested six months to develop the LSE Funding Mechanism.<sup>7</sup> On July 8, 2009, the Joint Filing Parties requested additional time to submit the tariff revisions necessary to implement the LSE Funding Mechanism, which the Commission granted on July 9, 2009. The Commission directed the Joint Filing Parties to submit a compliance filing by November 15, 2009.

### **III. PROPOSED TARIFF AMENDMENTS**

The Joint Filing Parties submit that these proposed tariff revisions fulfill the currently effective tariff requirements for the allocation of Highway SDU costs to LSEs, while addressing the economic concerns of smaller LSEs by collecting LSE costs over an extended period of time. The proposed Highway Facilities Charge ("HFC") will allow the NYISO to recover the LSE portion of the costs for Highway SDUs from LSEs, credit those payments to the relevant Transmission Owners, and adjust the costs charged to LSEs as appropriate to reflect new projects' use of LSE-created Headroom.

This LSE Funding Mechanism is contained in a new Rate Schedule 12 to the NYISO OATT, which is largely modeled on the Commission approved Rate Schedule 10 for Reliability Backstop Projects. Conforming revisions to Attachment S to the NYISO OATT were also necessary to implement the LSE Funding Mechanism.

#### **A. Scope and Procedural Provisions**

Proposed section 1.0 of Rate Schedule 12, entitled "Rate Mechanism for the Recovery of the Highway Facilities Charge," establishes the manner in which the HFC<sup>8</sup> will be

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<sup>6</sup> March 2008 Order at P 46.

<sup>7</sup> *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 (2009) ("January Order").

<sup>8</sup> The HFC is the rate charged by the NYISO for recovery of the portion of the costs related to Highway

developed, filed at the Commission, and charged to LSEs. Revisions to current section VII.L.3.b of Attachment S have been made that specify that LSEs will pay for the actual cost of a Highway SDU above that paid by Developers pursuant to Rate Schedule 12.<sup>9</sup>

Proposed section 2.0 of Rate Schedule 12 provides that construction of the Highway SDU will begin upon receipt of all necessary federal, state and local approvals, including FERC acceptance of the rate treatment. The LSEs' share of the costs will be reduced by any Headroom payments made to the constructing Transmission Owner by a subsequent Developer, as more specifically described below. When a project is complete, the constructing Transmission Owner will make an informational filing to the Commission, providing the final project cost as well as the revenue requirement to be recovered from the LSEs.

**B. Highway Facilities Charge**

**1. HFC Revenue Requirement Recovery**

Proposed section 3.0 of Rate Schedule 12 provides the formula for recovery of the HFC revenue requirement from LSEs. The HFC revenue requirement is to be billed by the NYISO and paid by the LSEs in accordance with section VII.L.3.b of Attachment S.

Proposed section 3.1 of Rate Schedule 12 provides that the monthly HFC will be based on the revenue requirement filed by the Transmission Owner responsible for constructing the Highway SDU. The HFC will be applied based on each LSE's proportionate share of the ICAP requirement in the statewide capacity market, reflecting locational capacity requirements as provided in Attachment S. As provided in proposed section 3.2, the HFC will also include operation and maintenance costs for the proportionate share of the Highway SDU funded by LSEs.

Proposed section 3.3 of Rate Schedule 12 provides that LSEs will not be responsible for costs in excess of their share of the final Class Year estimated cost of the Highway SDU, if the excess costs result from causes within the control of the Transmission Owner. Corresponding revisions have been made to current Section VIII.F.4 of Attachment S.<sup>10</sup> LSEs, however, will be responsible, together with responsible Developers, for such excess costs not under

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SDUs required for deliverability that are allocated to LSEs.

<sup>9</sup> Except for cost overruns that are within the control of the constructing Transmission Owner.

<sup>10</sup> Essentially, this includes any event under the control, or caused by something under the control of, the constructing Transmission Owner that creates the increased costs. These include: (1) changes to the design or operating characteristics of the Developer's project that impact the scope or cost of related upgrades; (2) any costs that were not within the scope of the Class Year Interconnection Facilities Study that subsequently become known as part of the final construction design; or (iii) cost escalation of materials or labor, or changes in the commercial availability of physical components required for construction.

Transmission Owner control. Conforming revisions have been made to Attachment S sections VII.L.3.c and VIII.F.4.

## **2. Allocation of Incremental Transmission Congestion Contracts**

Under current section VII.K.5 of Attachment S, Developers and LSEs could potentially obtain Incremental Transmission Congestion Contracts (“Incremental TCCs”) for their funding of Highway SDUs. Proposed section 3.4 of Rate Schedule 12 provides additional detail regarding the potential allocation of Incremental TCCs to LSEs. As it is not possible to literally allocate and track fractional TCCs among the numerous LSEs participating in the NYISO markets, the proposed tariff revisions provide that the NYISO will sell the Incremental TCCs and disburse or credit the associated revenues to the LSEs for as long as LSEs are responsible for funding the Highway SDU through the HFC. Disbursements or credits will begin on the first payment of revenues related to a sale of Incremental TCCs on or after the HFC first invoiced for a specific Highway SDU. The incremental revenues will not require, nor will they be dependent on, any reopening or review of the Transmission Owner’s TSCs or NTAC under Attachment H of the NYISO OATT.<sup>11</sup> A new section VII.L.5.a has been added to Attachment S, which provides that the NYISO will sell and credit Incremental TCCs attributable to LSEs in proportion to their funding of the Highway SDU.

## **3. Collection and Remittance**

Proposed section 3.5 of Rate Schedule 12 provides details on how the HFC will be collected and how those funds will be remitted to the constructing Transmission Owner. Specifically, HFC revenues will be collected monthly and remitted to the constructing Transmission Owner in accordance with section 7 of the NYISO OATT. Proposed section 3.6 provides that the monthly HFC billed to each LSE will be based on its proportionate share of the ICAP requirement in the statewide capacity market, adjusted to subtract locational capacity requirements, in accordance with the following formula:

LSE Monthly HFC Allocation =

$$\frac{\text{Monthly HFC} \times (\text{LSE ICAP Requirement} - \text{LSE Locational ICAP Requirement})}{(\text{Statewide ICAP Requirement} - \text{Sum of Locational ICAP Requirements})}$$

In the first year, the cost allocation will be based on the LSE’s ICAP requirement for the most recent NYISO Capability Year prior to the in-service date of the Highway SDU. In subsequent years, the billing cycle shall be adjusted, if necessary, to start following the establishment of the LSE’s ICAP requirements for the Capability Year.

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<sup>11</sup> This financial crediting mechanism for Incremental TCCs is also used in Rate Schedule 10, which has been accepted by the Commission. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068 (2009), *reh’g*, 126 FERC ¶ 61,320 (2009).

In order to account for load shifts between LSEs over time, there will be monthly billing true-ups. Any revenue shortfalls will be allocated on a monthly basis to remaining LSEs in proportion to their ICAP requirements for the current capability year.

### **C. Headroom Accounting**

Under current tariff provisions, Headroom is created where the Highway SDU for a project creates electrical capacity in excess of what the project requires.<sup>12</sup> The Consensus Deliverability Plan provided that as new facilities come on line and use the Headroom created by Highway SDUs paid for by prior Developers or LSEs, the Developers of those new projects will reimburse the prior Developers or compensate the LSEs who funded the Highway SDU.

Proposed Section 4 of Rate Schedule 12 provides the details of the Headroom accounting process which will allocate a portion of the costs of Highway SDUs to new Developers in proportion to their electrical use of that Headroom by the new Developers' projects. The payments collected from new Developers will be used to reimburse prior Developers or to compensate the LSEs who funded the Highway SDU in accordance with sections VIII.G and VIII.H of Attachment S. Conforming revisions have been made to sections VIII.G, VIII.H and VII.L.6 of Attachment S to clarify that new Developers will reimburse prior Developers or compensate LSEs who funded the Highway SDUs.

#### **1. Developer Payment Responsibility**

The proposed tariff changes clarify the Headroom payment responsibility of Developers when LSE funding occurs. Specifically, a new Developer must make a lump sum payment to the appropriate Transmission Owner in proportion to the amount of Headroom that the new Developer will use. The payment will be based on the new Developer's calculated electrical use of Headroom and on the depreciated cost of the Highway SDU, as applicable. The Transmission Owner's revenue requirements for the Highway SDU will be adjusted to account for the Developer's payment, which will lower the LSE's payment on a going forward basis. Attachment S, section VIII.G.2 has been modified to provide that where Headroom is created by LSE funding, Developers of subsequent CRIS projects will pay the Transmission Owner which is receiving, or will receive, LSE funding.

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<sup>12</sup> Headroom also can apply to a System Upgrade Facility or a Byway SDU.

New Developers using Headroom created by Highway SDU's funded by LSEs are effectively charged for the use of "rate base facilities." Therefore, Attachment S, section VIII.I has been modified to provide that "[w]ith the exception of Developer use of Headroom created by Load Serving Entity funding of System Deliverability Upgrades pursuant to Schedule 12 of the NYISO OATT, Developers are not charged for the use of any rate base facilities, except to the degree applicable as customers taking service in accordance with the rates, if any, that apply to those facilities."

## **2. Allocation of Incremental Transmission Congestion Contracts**

Under existing tariff provisions, subsequent Developers who make Headroom payments can potentially receive Incremental TCCs proportional to their payment. For the reasons stated above, proposed section 4.2 of Rate Schedule 12 provides that the NYISO will credit the new Developer with any revenues derived from the Incremental TCCs created by the Highway SDU in proportion to the use of Headroom by the Developer's project. Credits to the LSEs from the sale of Incremental TCCs will be reduced proportionately. Proposed section VII.L.6.a to Attachment S provides that Incremental TCCs distributed to prior Developers will be transferred to the new Developer in proportion to the Developer's Headroom use and payment. Additionally, a proposed section VII.L.6.b to Attachment S specifies that where new Developers compensate LSEs for use of the Headroom funded by LSEs, the NYISO will credit the revenues from the sale of Incremental TCCs among the new Developers and the LSEs, in proportion to their payments.

## **3. Headroom Accounts**

Headroom accounts for LSEs will be administered in a manner similar to other Headroom accounts. The LSE Headroom account will contain an electrical value, measured in MW of transfer capability, which will be adjusted on a yearly basis to reflect baseline changes in the system. Attachment S, section VIII.G.4.c has been modified to provide that Headroom accounts for LSEs will be closed when the MW value in the account is reduced to zero or at the end of the useful financial life of the Highway SDU.

Attachment S, subsection VIII.G.3 has been modified to provide two methods through which Highway SDUs will be depreciated. Proposed subsection VIII.G.3.a provides that SDUs not funded by LSEs pursuant to Rate Schedule 12 will be depreciated using the FERC-approved depreciation schedule applied to the Transmission Owner's comparable facilities. Headroom will be depreciated annually, starting with the first year the account is established.

Pursuant to proposed subsection VIII.G.3.b of Attachment S, for Highway SDUs funded by LSEs pursuant to Rate Schedule 12, the NYISO will use the FERC-approved depreciation schedule applied to the particular Highway SDUs by the Transmission Owner. Headroom will be depreciated annually starting with the year the Highway SDU is placed in service. Where a subsequent Class Year project is determined to use the Headroom on a

Highway SDU before it has been placed in service, the NYISO will calculate the Headroom use payment obligation of the project using the undepreciated cost of the Headroom.

**D. Ministerial Corrections**

Section VIII.F.4 has been modified to include two previously omitted terms: “Affected Transmission Owner(s)” and “System Deliverability Upgrades.” Attachment S has also been modified to consistently use the term “Highway System Deliverability Upgrade(s).”

**IV. EFFECTIVE DATE**

The Joint Filing Parties request that the Commission approve the proposed tariff modifications with an effective date of November 13, 2009.<sup>13</sup>

**V. COMMUNICATIONS AND CORRESPONDENCE**

Copies of correspondence concerning this filing should be served on:

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<sup>13</sup> Because this is a compliance filing, the Joint Filing Parties do not believe that the prior notice requirements under Section 205 are applicable but request waiver to the extent the Commission deems it necessary to allow the requested effective date. *See Southern Co. Srvs, Inc*, 61 FERC ¶ 61,339 at 62,328-331 (1992); *order on reh'g*, 63 FERC ¶ 61,217 at 62,596 (1993) (outlining the differences between compliance filings and Section 205 filings and emphasizing that the Commission is not required to act on the former within the normal sixty day statutory period).



Individual Company Representatives Listed in the  
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## **VI. SERVICE**

The NYISO will electronically send a 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, to the electric utility regulatory agencies of New Jersey and Pennsylvania and the service list in this proceeding. In addition, the complete filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com). The NYISO will also make a paper copy available to any interested party that requests one. To the extent necessary, the NYISO requests waiver of the requirements of Section 35.2(e) of the Commission's Regulations<sup>15</sup> to permit it to provide service in this manner.

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<sup>14</sup> Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2009)) is requested to the extent necessary to permit service on counsel for the NYISO in both Washington, DC and Richmond, Virginia, as well as the representatives for the NYTOs.

<sup>15</sup> 18 C.F.R. § 35.2(e).

## VII. CONCLUSION

Wherefore, for the foregoing reasons, the Joint Filing Parties respectfully request that the Commission take action as requested herein and accept the proposed revisions to the NYISO OATT effective November 13, 2009.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

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