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December 31, 2009

**By Hand Delivery**

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington DC, 20246

**Re: Compliance Filing of the New York Independent System Operator, Inc.,  
Docket No. EL09-57-001**

Dear Secretary Bose:

In compliance with the Commission's September 3, 2009 order ("September Order")<sup>1</sup> and the December 1, 2009 Extension of Time,<sup>2</sup> in this proceeding, the New York Independent System Operator, Inc. ("NYISO") respectfully submits revisions to Attachment S of the NYISO's Open Access Transmission Tariff ("OATT"). The September Order denied a complaint by Astoria Gas Turbine Power LLC ("NRG"), finding that certain projects proposed by NRG did not qualify for inclusion in the Class Year 2009 Interconnection Facilities Study, pursuant to the provisions in Attachment S of the NYISO OATT. The September Order, however, directed the NYISO to file tariff revisions to clarify the process for determining whether a project meets the requirements for inclusion in a Class Year.<sup>3</sup>

The NYISO respectfully requests that the Commission act on this compliance filing by February 28, 2010.

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<sup>1</sup> *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,221 (2009) ("September Order").

<sup>2</sup> *New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. EL09-57-000 (issued December 1, 2009).

<sup>3</sup> Capitalized terms not otherwise defined have the meaning ascribed to them in Article I and Attachment S of the NYISO OATT.

**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”); and
3. A blacklined version of the modifications to Attachment S of the NYISO OATT (“Attachment II”).

**II. BACKGROUND**

**A. Attachment S of the OATT**

Attachment S of the NYISO OATT establishes the procedures by which the costs of System Upgrade Facilities (“SUFs”) and System Deliverability Upgrades (“SDUs”)<sup>4</sup> are allocated to new projects interconnecting with the New York State Transmission System. Attachment S provides that costs of SUFs and SDUs are allocated according to the results of the Interconnection Facilities Study, which is performed annually on a consolidated basis for a group, or “Class Year,” of projects. Projects are eligible for a Class Year once they have satisfied the development milestones specified in Attachment S. Each project in a Class Year shares in the then currently available electrical capability of the transmission system, and each shares in the cost of SUFs and SDUs that would not have been required “but for” its Interconnection Request.<sup>5</sup>

Projects must satisfy two milestones by March 1 of a given year in order to qualify for a Class Year. The project must have its Interconnection System Reliability Impact Study (“SRIS”) approved by the NYISO’s Operating Committee<sup>6</sup> and the project must satisfy a specific “regulatory” milestone.<sup>7</sup> The regulatory milestone must be satisfied through a determination by state regulators that “the Article X, Article VII or comparable permitting application for the project is complete before ... March 1 each year.”<sup>8</sup>

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<sup>4</sup> “SUF” and “SDU” are terms used in the New York Control Area to refer to upgrades typically referred to in other Control Areas as “Network Upgrades.”

<sup>5</sup> See, e.g., NYISO OATT Attachment S Section I at Sheet Nos. 653.02-659.

<sup>6</sup> See NYISO OATT Attachment S Section IV.B.3.a at Sheet No. 674.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

When Attachment S was first approved by the Commission in 2001,<sup>9</sup> Article X of the New York Public Service Law (“PSL”) contained the permitting requirements relevant to Attachment S for a large generating project, like the NRG projects. When Article X expired in 2003, the NYISO worked with stakeholders to develop procedures that would clearly identify the “comparable permitting application”<sup>10</sup> to be used going forward to determine whether a large generating project had satisfied the regulatory milestone for entry into a Class Year. The NYISO issued Technical Bulletin No. 129 - Cost Allocation Class Year Eligibility Requirements (“Technical Bulletin No. 129”), which provided, for example, that an application with the New York State Department of Environmental Conservation (“DEC”) for an air or water discharge permit would be a “permitting application” and that a DEC “Notice of Completion” would be acceptable evidence of a complete application.<sup>11</sup>

## **B. September Order**

The September Order denied the June 22, 2009 complaint filed by NRG against the NYISO (“NRG Complaint”).<sup>12</sup> However, the September Order also found that the language in Section VI.B.3.a needed to be clarified as follows:

(i) delete the reference to Article X; (ii) clarify what constitutes a “comparable” permit application; (iii) define the term “complete”; and (iv) define what constitutes a state regulator’s “determination” that an application is complete.<sup>13</sup>

The September Order further directed the “NYISO to meet with its stakeholders for the purpose of amending this provision ....”<sup>14</sup>

## **III. DESCRIPTION OF PROPOSED TARIFF REVISIONS**

The NYISO is filing herein tariff revisions, developed with stakeholder input, that address in significant detail the regulatory milestone that must be met for projects to qualify for

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<sup>9</sup> *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,118 (2001), *reh’g*, 100 FERC ¶ 61,103 (2002).

<sup>10</sup> NYISO OATT Attachment S Section IV.B.3.a at Sheet No. 674.

<sup>11</sup> See Technical Bulletin No. 129 - Cost Allocation Class Year Eligibility Requirements (May 28, 2004) at <[http://www.nyiso.com/public/documents/tech\\_bulletins/index.jsp](http://www.nyiso.com/public/documents/tech_bulletins/index.jsp)>.

<sup>12</sup> September Order at P 1.

<sup>13</sup> September Order at P 38 (note that the September Order directs the NYISO to modify Section VI.B.3(b), but the reference should be to Section VI.B.3.a).

<sup>14</sup> September Order at P 38.

a Class Year. The proposed regulatory milestone is defined to require the achievement of any one of several specified existing steps in the permitting process that occurs under the permitting regulations or statutes applicable to a particular project. Accordingly, the proposed regulatory milestone does not put regulatory agencies, like the DEC, in the position of having to interpret the NYISO's OATT to determine whether a project's permit application is complete for the NYISO's purposes. The revised tariff sheets will also render unnecessary the clarification regarding the regulatory milestone contained in Technical Bulletin No. 129.

The proposed tariff sheets modify Section VI.B.3.a of Attachment S to eliminate the reference to the expired Article X.

The proposed tariff sheets recognize that different types of projects are subject to different permitting requirements. For example, the tariff sheets separately address air or water permit applications with the DEC, the process under the New York State Environmental Quality Review Act, and Article VII of the New York State Public Service Law applicable to transmission projects.

For each specified permitting process, the revised tariff language states what determination or action must occur in order for the regulatory milestone to be satisfied. While, generally, the regulatory milestone continues to require that the permitting application be determined to be complete by March 1, the specific meaning of "determine" and "complete" is specified for each type of permitting process. Proposed Sections VI.B.3.a(1) and VI.B.3.a(2) provide this detail. Projects may achieve any one of the stated determinations or actions for the regulatory milestone to be satisfied.

Additionally, the proposed tariff language clarifies the term "comparable" and limits its application to very specific circumstances. Proposed Section VI.B.3a(2), states that projects located outside New York State, but proposing to interconnect to the New York State Transmission System, must either satisfy one of the specified milestones for a federal permitting process or must satisfy an applicable non-New York permitting milestone comparable to one of those milestones specified for projects located within New York State.

Proposed Section VI.B.3.a(3) states that a project that is not subject to any of the identified permitting processes will be considered to have satisfied the regulatory milestone.

Finally, proposed Section VI.B.3.a(4) will require that each Developer with an SRIS approved by the Operating Committee notify the NYISO within 5 business days of March 1, whether or not its project satisfied the regulatory milestone on or before March 1.

**IV. EFFECTIVE DATE AND REQUEST FOR EXPEDITED CONSIDERATION**

The Joint Filing Parties request that the Commission approve the proposed tariff modifications with an effective date of January 1, 2010.<sup>15</sup> This will allow the proposed tariff language to apply to projects seeking to enter Class Year 2010. The NYISO respectfully requests that the Commission issue an order by February 28, 2010, so that the NYISO and Developers have certainty as to the applicable standard by March 1, 2010, the start date for Class Year 2010.

**V. COMMUNICATIONS AND CORRESPONDENCE**

Copies of correspondence concerning this filing should be served on:

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<sup>15</sup> Because this is a compliance filing the NYISO does not believe waiver of the prior notice requirements is necessary to accept the requested effective date. *See Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,083 at P 7 (2005) (finding that “waiver of the prior notice requirement is not necessary when compliance filings are accepted”). However, to the extent necessary, the NYISO requests waiver to permit a January 1, 2010 effective date.

<sup>16</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.

Ms. Kimberly D. Bose, Secretary  
December 31, 2009  
Page 6

**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 email 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 electric utility regulatory agencies of New Jersey and Pennsylvania. The NYISO will also make a paper copy available to any interested party that requests one.

**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 January 1, 2010.

Respectfully submitted,

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Ted J. Murphy  
Counsel to  
the New York Independent System Operator, Inc.