

December 1, 2011

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

Re: New York Independent System Operator, Inc., Revised Compliance Implementation Plan and Status Report, Docket No. ER07-521-009

Dear Ms. Bose:

On April 16, 2010, the NYISO filed an implementation compliance plan¹ in response to the Paragraph 82 and Ordering Paragraph D of the Commission's April 16, 2008 order² in the above-captioned proceeding to make non-historic Fixed Price TCCs ("FPTCCs") available in the autumn of 2012. The Commission accepted the NYISO's plan but required periodic reports on the NYISO's progress towards that goal.³ As the Commission noted in its July 2010 Order, the NYISO's autumn 2012 implementation date for non-historic FPTCCs was dependent upon the development of software systems necessary to administer a multi-duration TCC auction. Although the Commission indicated that it desired non-historic FPTCCs to be available as soon as possible, it reiterated its awareness of this dependency.

When available, non-historic FPTCCs will enable Load Serving Entities ("LSEs")⁴ to obtain new FPTCCs between non-historic Points of Injection and Points of Withdrawal. Once an accepted non-historic FPTCC mechanism is in place, the NYISO would expect to be in full compliance with the Commission's long term firm transmission right policies as set forth in Order Nos. 681 and 681-A.⁵

¹ *New York Independent System Operator, Inc.* Docket No. ER07-521-009, letter dated April 16, 2010 to Secretary Bose from Ted Murphy, counsel for the NYISO ("April 2010 compliance plan")

² *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 (2008) ("April 2008 Order")

³ *New York Independent System Operator, Inc.* 132 FERC ¶ 61,030 accepting the compliance plan and requiring the filing of two Status Reports, December 1, 2010 and December 1, 2011; ("July 2010 Order")

⁴ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Section 2 of the NYISO's Market Administration and Control Area Services Tariff and Section 1 of the Open Access Transmission Tariff ("OATT")

Although the NYISO stated in its December 1, 2010 Status Report that it was on track to implement the multi-duration TCC auction in the autumn of 2012, the NYISO discovered in mid-2011 that it would not be able to implement the new software by the autumn of 2012. The NYISO has since learned that those portions of the new software that would allow the NYISO to conduct the multi-duration auction itself will not be available until after the autumn of 2013. To avoid further delay and offer non-historic FPTCCs as soon as possible, the NYISO proposes to separate the two projects into multiple project deliveries and develop the non-historic FPTCCs as part of first project delivery.

The NYISO is offering for Commission consideration a revised implementation plan as detailed below. Under this proposal, the NYISO will decouple non-historic FPTCC product development from delivery of the multi-duration auction format and offer non-historic FPTCCs in the spring of 2013. While this date is six months beyond the delivery date indicated in the NYISO's April 2010 filing and accepted in the Commission's July 2010 Order, the NYISO submits that the additional six months are necessary, as described below, to resolve design issues with stakeholders, file tariff amendments, and finalize the software upgrade. A timeline providing detail on the tasks to be pursued between now and the spring 2013 roll-out is provided in Section III. B. below.

The NYISO also requests that the Commission accept this revised implementation plan as its December 1, 2011 status report.⁶

⁵ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 (July 20, 2006), *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (November 16, 2006) ("LTTR Orders").

⁶ July 2010 Order, Ordering Paragraph (B).

I. Communications

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II. Background

TCCs have been available to market participants that wish to hedge their exposure to congestion in the NYISO's Day-Ahead Market ("DAM") since its inception in 1999.⁷ All TCCs are "fully funded" since the New York Transmission Owners are required by the tariff to cover any Congestion Rent Shortfalls.⁸

The Commission accepted the NYISO's February 5, 2007 Long Term Transmission Rights ("LTTR") Compliance Filing as meeting the requirements of Orders 681 and 681-A, subject to the NYISO making certain limited modifications and future compliance filings. The final outstanding compliance obligation associated with these Orders is that the NYISO must make LTTRs available between "non-historic" Point of Injection ("POI") and Point of

⁷ A TCC holder collects the congestion rent associated with transmitting one MWh of energy from a specific POI to a specific POW. TCCs do not provide a physical transmission priority but, as the Commission has recognized, allow customers to obtain the functional equivalent of "physically firm" transmission service. TCCs may also be obtained through NYISO-administered auctions, through "Direct Sales" by the New York Transmission Owners, via secondary market transactions, by funding the creation of transmission enhancements (which can result in the award of "Incremental TCCs"), or in recent years, through the creation of Fixed Price TCCs. *See Central Hudson Gas & Electric Co., et al.*, 86 FERC ¶ 61,062 at 61,228-33, *Order on Reh'g and Compliance Filing*, 88 FERC ¶ 61,138 at 61,399-61,402 (1999) (describing and generally approving TCC program and auction structure).

⁸ See: OATT Section 20, Attachment N

Withdrawal (“POW”) combinations.⁹ The Commission directed the NYISO to “expand the availability of LTTRs to LSEs that sought to use non-historic POIs and POWs.”¹⁰ The Commission further stated this availability “may take the form of Fixed Price TCCs” or alternative instruments that satisfied the LTTR requirements. It specified that the NYISO could “establish reasonable priorities for the allocation of these rights, such as a preference for LSEs with long-term power supply arrangements, and may propose reasonable limits on the amount of existing transmission capacity used to support the rights.” As mentioned, the Commission also authorized the NYISO to implement this requirement as part of its “End-State Auction.”¹¹

The Commission allowed the NYISO to base its design for non-historic FPTCCs on the design of its historic FPTCCs, which have been available to Market Participants with expiring Existing Transmission Agreements since November, 2008.¹² These historic FPTCCs are offered with an initial five-year term and a five or seven-year renewal thereafter for a potential term of ten to twelve years.¹³

The pricing mechanism for the non-historic FPTCC proposed in the April 2010 filing did not utilize the calculated price structure of historic FPTCCs but instead based the price to be paid for each TCC on the market clearing price for a five-year TCC between the same POI and POW, as determined in the five-year round of the multi-duration TCC auction. The NYISO proposed using a five-year price to match the proposed initial five-year term of the non-historic product.¹⁴

In accepting the NYISO’s proposal to use the existing historic Fixed-Price TCC rules as the basis for non-historic FPTCCs, the Commission indicated that the NYISO could meet the ten-year coverage requirement:

[T]hrough any mix of term lengths and renewals that stakeholders agree to, as long as the coverage is firm and the rights are fully funded¹⁵

⁹ April 2008 Order at P 82 and Ordering Paragraph D.

¹⁰ April 2008 Order at P 82.

¹¹ *Id.*

¹² Fixed Price TCCs have most of the attributes of TCCs. Like TCCs, they provide congestion hedges in the DAM between a particular POI and POW and are fully funded by the NYTOs via the existing TSC arrangements. Fixed Price TCCs are currently only available to LSEs with expiring Existing Transmission Agreements and expiring Grandfathered Rights or Grandfathered TCCs that can certify that they will be legally obligated to serve the Load they historically served and that they need the transmission capacity of the Fixed Price TCC to serve that Load. The NYISO refers to this as the historic FPTCC product. At acquisition, LSEs have the right to a five- or ten-year duration for their historic Fixed Price TCC. LSEs purchasing Energy from the New York Power Authority under agreements that expire 2025, may obtain a twelve-year Fixed Price TCC for related transmission service.

¹³ *Id.*

¹⁴ *See*: April 2010 compliance filing

¹⁵ July 2010 Order P. 15, citations omitted

As the NYISO explained in its April 2010 filing, its implementation plan depended on the availability of the multi-duration auction and its related software for two reasons. First, the price for the five-year initial term of the non-historic FPTCC was to be established in the five-year round of the multi-duration auction.¹⁶ Second, software enhancements that were included in the multi-duration auction project were necessary to automate the processes necessary to perform the feasibility analysis the NYISO would use in awarding non-historic FPTCCs. As the Commission's July 2010 Order acknowledged, the iterative feasibility analysis required to support the awarding of non-historic FPTCCs was not possible given the manual limitations of the current Centralized TCC Auction process.¹⁷

The delay now projected for the delivery of the multi-duration auction platform has caused the NYISO to search for solutions that will allow it to offer non-historic FPTCCs as soon as possible. The NYISO has concluded that offering a two-year rather than a five-year initial term for the non-historic FPTCC, and finalizing the software upgrades necessary to perform a feasibility analyses for non-historic TCC requests within the current Centralized TCC Auction process would allow it to initiate the offer process for non-historic FPTCCs by January of 2013 with an effective date for the initial non-historic FPTCCs of May 1, 2013.¹⁸ The NYISO sets forth the details of this proposed revision to its compliance plan below and requests that the Commission accept it.

III. Overview of Non-Historic Fixed Price TCCs Under the Amended Compliance Plan

A. Design Details

To make non-historic FPTCC products available as soon as possible, the NYISO proposes to use an initial term that differs from the initial terms offered for historic Fixed-Price TCCs.¹⁹ That is, the NYISO is proposing a two-year rather than a five-year initial term in order to establish the price for the initial-term in the Spring 2013 Centralized TCC Auction two-year sub-auction.

As the NYISO explained in its April 2010 filing, it no longer offers five-year TCCs in the Centralized TCC Auction because of limited stakeholder interest and concerns that five-year

¹⁶ April 2010 compliance filing pp. 7-8.

¹⁷ July 2010 Order P. 13.

¹⁸ The software upgrades mentioned here are discussed in greater detail in Section III. B.

¹⁹ Historic FPTCCs have either a five-year initial term with a five- or seven-year renewal or a ten-year term. See: OATT Attachment M, Section 19.2.1.1

TCCs were undervalued when they were sold in the early 2000s.²⁰ Five-year TCCs were expected to be offered, however, once the end-state, multi-duration auction became available. Thus, the NYISO proposed to wait until the multi-duration auction platform was available to price the non-historic FPTCCs' initial five-year term.²¹

However, in response to stakeholder interest, the NYISO has recently re-instituted the offer of two-year TCCs. Based on the level of participation in the auctions of these two-year TCCs, it appears that the NYISO could reasonably price the initial term of the non-historic FPTCC using the two-year TCC prices, but only if the Commission accepts the plan to offer an initial term for non-historic FPTCCs that differs from the initial term for historic Fixed-Price TCCs.

The NYISO submits that a two-year term is fully supported by Commission policy which is to allow individual "transmission organizations" the flexibility to develop LTTR rules that are compatible with their market designs and with regional needs.²² Moreover, as the Commission noted in its July 2010 Order in this docket, LTTR products can be made available in "any mix of term lengths and renewals" to which stakeholders agree. The Commission explained this rationale in an earlier ISO-NE Order:

Order No. 681 did not require transmission organizations to make available LTTRs at a fixed price for a ten-year term in order for such LTTRs to be considered "firm" coverage. It instead provided that transmission organizations can offer 10-year coverage through any mix of term lengths and renewals that stakeholders agree to, as long as the coverage is "firm", meaning that the *quantity* of the rights allocated is fixed over the 10-year period and that the rights are fully funded, i.e., the rights provide full reimbursement of any congestion costs that are incurred. [Citing Order No. 681, FERC Stats & Regs. ¶ 31,226 at P 258.] In Order No. 681, the term "price certainty" is used in the context of full funding of LTTRs.[*Id.* P 170]. With respect to price, Guideline 7 only requires that the LTTRs be made available to LSEs without their having to participate in an auction²³

²⁰ Avoiding below-market value pricing, which can occur when longer-term TCCs are sold in the single-duration, sub-auction Centralized TCC Auction format currently used was a concern of, among others, the NYS Public Service Commission. See: April 2010 compliance filing at p. 12.

²¹ A five-year TCC in the multi-duration auction is priced at the sum of the market clearing prices of the shorter duration-TCCs (over the same path) plus the clearing price of the fifth year of the five-year TCC. Because such prices would be based on the bids of participants interested in purchasing shorter duration TCCs as well as the five-year product, the prices can reasonably be expected to more accurately reflect market value and thus provide a better foundation for pricing at least the initial term of the non-historic Fixed Price TCCs.

²² See, e.g., Order No. 681-A at 2.

²³ *ISO New England, Inc. and New England Power Pool*, 125 FERC ¶ 61,069 P. 29

On expiration of the initial two-year term, the NYISO intends to offer eight annual renewals, for a total term of ten years. The NYISO has not finalized the pricing mechanism for its annual renewals but it is expected that the renewal price will be tied to the price of one-year TCCs sold in auctions held at or near the time of the renewal. The NYISO will finalize all details of the non-historic FPTCC product in the tariff sections it expects to file in 2012.

The NYISO intends to retain the other non-historic FPTCC design elements described in its April 2010 filing, including the limitation on initial eligibility for non-historic FPTCCs to LSEs that certify they are legally obligated to serve the Load in place at the time of the FPTCC nomination, and that they need the TCC to serve their Load. The specific certification requirements would be the same as the ones applied to LSEs seeking to convert Grandfathered Transmission Rights into historic Fixed Price TCCs, except to the extent necessary to allow LSEs to nominate rights between any POI and their Load Zone(s).

The NYISO is also planning to retain the allocation of 2.5% of total transmission system capacity made available in the Centralized TCC Auction to support non-historic FPTCCs. This allocation was developed in conjunction with the NYISO stakeholders and is informed by the fact that such a large portion of transmission capacity is already committed to LTTRs in the form of Grandfathered Transmission Rights and “historic” Fixed Price TCCs. The NYISO is intending to offer 2.5% of available transmission capacity for its non-historic FPTCCs every other year so that the total transmission capacity offered for this product will total 12.5% of available transmission system capacity once the product is rolled out completely.

The NYISO also needs to revise the credit policy currently used to support the two-year TCC in order to allow purchasers to pay for their two-year TCCs one year at a time. Currently two-year TCC purchasers pay for both years at once. The Commission has required that holders of non-historic FPTCCs pay for their TCCs annually, as do holders of historic FPTCCs,²⁴ and a revised credit policy is necessary to support this payment plan.

LSEs awarded these FPTCCs will be assured of a TCC that offers a fully funded congestion hedge for energy purchases from the TCC’s point of injection to its point of withdrawal in their Load Zone that is continuously available over a ten-year period. As before, the LSE will not need to participate in an auction to acquire this instrument.

²⁴ July 2010 Order P. 16

B. Implementation Time Line

The NYISO believes that non-historic FPTCCs cannot be introduced before the spring of 2013 in order to allow the NYISO to complete the software upgrades described below, and to allow it and its stakeholders the opportunity to complete the tariff development and filing process necessary to describe the non-historic FPTCC in the NYISO's tariffs. This includes revisions to the NYISO's TCC credit policy, as mentioned above, to cover a two-year TCC that the purchasing LSE pays for one year at a time. Revisions to NYISO Manuals and User Guides, and user-testing of the new software, would also be necessary before a new product could be offered.

The multi-duration auction project included enhancements to the Automated Market System ("AMS") which provides the web-based interface between the NYISO stakeholder and the TCC auction engine.²⁵ These software enhancements will allow the NYISO to support the LSE certification process and automate the submittal of LSE nominations. They will also facilitate the feasibility analysis of submitted FPTCC requests and proration activities, if necessary. With the automation of these activities, LSEs could view the prices for the initial term of their nominated non-historic FPTCCs, inform the NYISO of their decision to buy or not buy the product, and the NYISO could conduct the feasibility analysis necessary to make final awards of non-historic FPTCCs all without any undue delay in the Centralized TCC Auction. The NYISO's current expectation is that the single non-auction round will add one week to the current Centralized TCC Auction.

The NYISO has completed the internal Functional Requirements Specification ("FRS") describing the changes needed to its TCC AMS, expects to complete the FRS and "Use Cases" describing changes to the Credit Management System for an updated two-year TCC credit policy, and is working towards completion of the Use Cases for the first quarter of 2012 for the TCC AMS. Software development has started on those Use Cases already completed and is expected to complete in the beginning of the third quarter in 2012. Testing of all functionality including quality assurance, market trial, and user acceptance testing is expected to complete early in last quarter of 2012.

If the Commission accepts this revised compliance plan, the NYISO expects to file the non-historic FPTCC tariff sections before the end of the second quarter of 2012. Tariff changes will be needed to establish the price for the non-historic FPTCCs, the registration and certification requirements, credit policy requirements and a rationing mechanism if the nominations by LSEs interested in purchasing non-historic FPTCCs cannot be honored within a

²⁵ The AMS software links to either software engine, the current one or the revised engine that supports the multi-duration auction platform.

feasible solution. Filing by the end of the second quarter of 2012 is well within the 120 day window requested by the Commission for these revised tariff sections in its July 2010 Order.

LSEs would be expected to begin the process of demonstrating eligibility for non-historic FPTCCs during the period in which the NYISO sets up the Spring 2013 Centralized TCC Auction. Based on its past experience administering Centralized TCC Auctions, the NYISO expects that this process would begin in the last quarter of 2012 with the Centralized TCC Auction process beginning in January, 2013. The NYISO intends to offer two-year TCCs in the Spring 2013 Centralized TCC Auction, thus ensuring that a pricing round for the initial term of the non-historic FPTCCs will be available.

With diligent effort, the NYISO expects to be able to meet its spring 2013 target for final implementation of non-historic Fixed Price TCCs.

IV. Stakeholder Process

The NYISO has discussed the design for non-historic FPTCCs with its stakeholders at twenty-seven meetings that started in January 2009. The NYISO specifically discussed this revised implementation plan—the delay in offering non-historic FPTCCs and the revision to a two-year rather than a five-year initial term—at a Market Issues Working Group meeting on October 19, 2011, at Credit Policy Working Group meetings on October 28, 2011 and November 18, 2011, and in separate in-person or over-the-phone conversations with Market Participants expecting to purchase this product. As well, the NYISO circulated a synopsis of this filing to its Market Participants on November 22, 2011.

Those Market Participants that have expressed an interest in purchasing this product are principally municipal electric distribution agencies or their agents. Those that spoke with NYISO staff support the revision to a two-year initial term²⁶ and did not share any concern over the six-month delay in implementation. The Market Participant community in general has expressed no opinion either in support of, or in opposition to, the revisions discussed herein. The NYISO received no comments at all as a result of its synopsis circulation.

²⁶ The NYISO's tariff requires it to hold credit ("the holding requirement") to cover future year payments due on a multi-year TCC. The financial difference in the holding requirement between a five-year TCC purchased one year at a time and a two-year TCC purchased one year at a time can be significant.

V. Service

The NYISO will send 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. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

VI. Conclusion

Wherefore, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this revised compliance plan as satisfying its April 2008 Order. The NYISO also requests that the Commission accept this filing as satisfying the required December 1, 2011 Status Report in this docket.

Respectfully Submitted;

/s/ Mollie Lampi

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