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December 6, 2010

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: *New York Independent System Operator, Inc.*, Initial Compliance Filing and
Request for Expedited Action No Later Than December 16, 2010, Docket No.
ER10-3043-___**

In compliance with Paragraph 73 and Ordering Paragraph “B” of the Commission’s November 26, 2010 *Order on Proposed Revisions to In-City Buyer Side Mitigation Measures* (“November 26 Order”)¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this initial compliance filing to address a single issue. Specifically, this filing provides additional support for the September 27 Filing’s² proposal to revise the In-City³ Offer Floor exemption tests in Section 23.4.5.7.2 of Attachment H to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”). Under the NYISO’s proposal, the exemption analysis would use ICAP Spot Market Auction prices for future Capability Periods beginning with the Summer Capability Period that commences three years from the start of a proposed facility’s Class Year (the “Three-Year Look-Ahead Rule”). For the reasons set forth in Section II below, the NYISO **respectfully requests that the Commission shorten the usual comment period and take expedited action as necessary**

¹ *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 (2010) (“November 26 Order”).

² *Proposed Enhancements to In-City Buyer-Side Capacity Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirement*, Docket No. ER10-3043 (September 27, 2010)

³ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article 2 of the Services Tariff, in Section 23.2.1 of Attachment H thereto, or in Section 25.1.2 of Attachment S to the NYISO’s Open Access Transmission Tariff (“OATT”) as applicable.

Ms. Kimberly D. Bose, Secretary

December 6, 2010

Page 2

to issue an order accepting the Three-Year Look-Ahead Rule no later than December 14, 2010.

The NYISO will make a separate compliance filing to address the November 26 Order's other directives no later than the January 25, 2011 deadline.

I. Additional Support for the Proposed Three-Year Look-Ahead Rule

As the November 26 Order observes, the proposed Three-Year Look-Ahead Rule was part of the NYISO's "overall effort to better coordinate the Attachment H exemption tests with the requirements and timetables established under OATT Attachment S....."⁴ and to promote greater transparency and certainty. Under the version of Attachment H that was effective prior to the revisions accepted by the Commission in the November 26 Order, the exemption test used price data starting with the Capability Period in which an ICAP Supplier "is reasonably anticipated to offer to supply UCAP" (the "Reasonably Anticipated Entry Date Rule"). The November 26 Order concluded that the NYISO had not provided sufficient support for changing to the Three-Year Look-Ahead Rule but invited the NYISO to provide additional support for it.

The NYISO is therefore providing additional support for its proposal. The NYISO's position is that the proposed Three-Year Look-Ahead Rule is an improvement over the Reasonably Anticipated Entry Date Rule, and should be accepted by the Commission, for the following reasons.

First, the Reasonably Anticipated Entry Date Rule does not provide for the high level of predictability or transparency that the NYISO has been striving to create through all of the enhancements to the In-City Buyer-Side Capacity Market Mitigation Measures. Developers' plans are not always clear and can be subject to change. Exactly when a potential Installed Capacity Supplier is "reasonably anticipated" to begin offering UCAP is open to disagreement and thus to controversy. The NYISO's September 27 Filing described that the proposed revisions were designed to provide consistency, transparency, and predictability, so that developers considering entering the market, and all Market Participants and stakeholders, can perform their own analyses, and make business decisions based on their own analyses. To revert to a rule such as the Reasonably Anticipated Entry Date Rule would require that the NYISO either accept the developer's self-identified in-service date or apply its own judgment as to the entry date. As indicated below, there are many factors that affect an in-service date, and they often are not predictable. Conversely, the Three-Year Look-Ahead Rule is based on

⁴ November 26 Order at P 73.

Ms. Kimberly D. Bose, Secretary

December 6, 2010

Page 3

both actual entry date experience, and the fact that it eliminates forecasting each proposed project's actual entry date. As is explained in the attached affidavit of David Lawrence, and its supporting exhibit,⁵ experience confirms that the in-service dates identified by developers for purposes of the Interconnection Queue do in fact change significantly throughout the time a project is in the queue. Therefore, it was, and is, reasonable for the NYISO to seek to improve upon the Reasonably Anticipated Entry Date Rule.

Second, a potential Installed Capacity Supplier will also have substantial influence over the definition of the "reasonably anticipated" date and an incentive to define it in the manner that is more likely to result in a more favorable exemption or Offer Floor determination. During the stakeholder process, stakeholders expressed the same concerns as the NYISO about reliance on developers' self-identified in-service dates, as expressed above. Further, the NYISO reasonably concluded, after consulting its stakeholders, that the Three-Year Look-Ahead Rule was superior to the Reasonably Anticipated Entry Date Rule. By contrast, there were no objections to the proposed Three-Year Look-Ahead Rule during the stakeholder process.

Third, as the Exhibit to Mr. Lawrence's affidavit shows, the Three-Year Look-Ahead Rule is a reasonable approximation of both the length of time between the Class Year cost allocation process when the developer is making an investment decision and when the developer can reasonably be expected to enter the market. That reasonable approximation is based in part on the length of time it has actually taken In-City projects to enter into service in recent years.⁶

Fourth, the NYISO also reasonably determined, again after stakeholder discussions, that the Three-Year Look-Ahead Rule was superior to other possible alternatives. As Mr. Lawrence explains in his Affidavit, the NYISO considered developing entry date assumptions that would have varied based on the technologies used in particular projects. For example, the NYISO examined the possibility of using different start times for peaking units, baseload units, and UDR projects (Scheduled Lines) as well as other factors. The tenor at the conclusion of the discussion indicated that using different start times for various technologies was a complication that would not necessarily yield more accurate exemption determinations. In addition, even projects that utilize the same technology can have widely varying lengths of time to obtain Federal, state (and sometimes more than one state), and local approvals, authorizations, and permits from multiple jurisdictional authorities. There also can be

⁵ See Attached Affidavit of David Lawrence at PP 12-13 and Exhibit 1.

⁶ See *Id.* at P 13.

Ms. Kimberly D. Bose, Secretary

December 6, 2010

Page 4

unanticipated delays in obtaining financing and in the construction process that result in a changed entry date.

Ultimately, the NYISO concluded that the alternative proposals, including the option of retaining the Reasonably Anticipated Entry Date Rule, would not necessarily yield more accurate determinations. Further, the alternatives added layers of uncertainty as they might lead to disputes between the NYISO, developers, Market Participants, and other stakeholders, or provide an opportunity for developers to identify an expected in-service date that serve their own interests. As to the latter, even if the developer self-identifies a date that is accurate, because there is an opportunity for a self-serving date to be selected, it risks undermining stakeholders' confidence in the process.

The NYISO recognizes that the Three-Year Look-Ahead Rule will not work perfectly in all cases. The NYISO has concluded, however, that the Three-Year Look-Ahead Rule is a significant improvement over the Reasonably Anticipated Entry Date Rule and other alternatives. Unlike the Reasonably Anticipated Entry Date Rule, the NYISO's proposal does not allow developers to influence the NYISO's analysis by self-identifying advantageous in-service dates, and is predictable and transparent. It has the substantial advantage of allowing anyone with interest in the NYCA markets to perform their own analysis.

II. Request for Expedited Commission Action and Shortened Comment Period

The NYISO respectfully requests that the Commission act expeditiously and issue an order accepting its proposed use of the Three-Year Look-Ahead Rule no later than December 14, 2010. Expedited action is essential because the November 26 Order accepted revisions to Section 23.4.5.7.3.3 that require the NYISO to complete its Offer Floor and exemption determinations prior to the commencement of the Initial Decision Period.⁷ The Initial Decision Period is anticipated to commence on December 17, 2010. If the Commission acts by December 14, the NYISO would have sufficient time to make Offer Floor and exemption determinations without any ambiguity regarding the governing entry date rule. If the Commission does not act by December 14, the NYISO would be forced, at a minimum, to make conditional determinations based on the Three-Year Look-Ahead Rule.⁸ A conditional

⁷ Section 25.1.2 of OATT Attachment S defines the "Initial Decision Period" as "the 30 calendar day period within which a developer must provide an Acceptance Notice or Non-Acceptance Notice to the NYISO in response to the first Project Cost Allocation issued by the NYISO to the developer."

⁸ The Reasonably Anticipated Entry Date Rule has been eliminated from Attachment H as a result of the Commission's acceptance of other amendments in accordance with its



Ms. Kimberly D. Bose, Secretary

December 6, 2010

Page 5

determination would result in considerable uncertainty for developers at the time they need to make a decision on whether to accept or reject their project cost allocations. That uncertainty is contrary to both the NYISO's and the Commission's goals.

The NYISO also respectfully requests that the Commission shorten the usual comment period to the extent necessary for it to issue an order by December 14. Granting this request should not prejudice any party to the proceeding or stakeholder because the NYISO's rationale for the Three-Year Look-Ahead Rule was discussed extensively in the stakeholder process and thus should already be familiar to all that monitored or participated in it.⁹

III. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the proposed Three-Year Look-Ahead Rule, as was originally proposed in the September 27 filing.

Respectfully submitted,

/s/Ted J. Murphy

Ted J. Murphy

Counsel to

the New York Independent System Operator, Inc.

Order. Thus, absent applying the Three-Year Look-Ahead Rule, the NYISO would not be able to perform the forecasts which are an essential component to making the required determinations.

⁹ The NYISO is not seeking a waiver of the Commission's normal sixty day prior notice requirement for tariff revisions proposed under Section 205 of the Federal Power Act because the Three-Year Look-Ahead Rule was initially proposed on September 27, 2010.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 6th day of December, 2010

/s/ Joy A. Zimmerlin

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