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June 21, 2011

By Electronic Filing

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. ER11-3312-000

Dear Secretary Bose:

The New York Independent System Operator, Inc. ("NYISO") submits this letter in response to the questions raised by the Office of Energy Market Regulation in a letter dated June 3, 2011 in this docket.¹

The June 3 letter seeks information relating to the NYISO's proposal to establish protocols for the limited exchange of Protected Information between and among Market Monitoring Units ("MMUs"), Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs"). The specific questions, with the NYISO's responses, are given below.

1. With regard to proposed tariff sections 30.6.6.1 and 30.6.6.1.1 regarding the sharing of Protected Information and joint investigations, respectively, provide examples of the types of investigations and/or evaluations that would be covered under these provisions.

The proposal to facilitate data exchanges does not, and is not intended to, alter the existing authority that MMUs currently have to monitor market behavior and undertake investigations. Monitoring the markets, and reporting to the Commission on potentially

¹ Capitalized terms not specifically defined herein have the meaning given to them in the NYISO's Market Administration and Control Area Services Tariff ("Market Services Tariff") or in the NYISO's Market Monitoring Plan that is Attachment O, Section 30 of the Market Services Tariff.

inappropriate behavior and possible market design flaws are core functions of the MMUs.² The NYISO recognizes that MMUs' authority to perform investigations is limited and designed its proposed data sharing rules to operate consistently with the Commission's rules.

Proposed tariff sections 30.6.6.1 and 30.6.6.1.1 are intended to permit MMUs, ISOs and RTOs to share Protected Information that is necessary to undertake investigation of possible Market Violations or market design flaws to determine if: (a) "sufficient credible information" exists to warrant referral of a possible Market Violation to the Commission, or (b) there is "reason to believe that a market design flaw exists" between two interconnected markets.³ The proposed authority to share information is explicitly and clearly limited to investigations that fall within a Requesting Entity's existing legal authority. *See* Proposed Section 30.6.6.1, which requires a requesting MMU, ISO or RTO to "submit a written request stating that the requested Protected Information is necessary to an investigation or evaluation that the Requesting Entity is undertaking within the scope of its approved tariffs, other governing documents, or an applicable law or rule." The authority to share information does not expand the permitted scope of the investigative authority of a MMU, ISO, or RTO. The joint investigation provision of proposed section 30.6.6.1.1 requires compliance with all of the proposed section 30.6.6.1 requirements.

An example of an investigation that might occur under the NYISO's proposal to permit the sharing of Protected Information between and among MMUs, ISOs and RTOs could arise where the MMU for a neighboring ISO/RTO found that the number of External Transactions scheduled in that neighboring market that failed check-out with New York was gradually increasing. Under these circumstances, the neighboring ISO's/RTO's MMU might want to review the bids submitted by Market Participants in New York. The neighbor MMU might also be interested in determining if there were reliability reasons causing the transactions to fail in New York. Proposed section 30.6.6.1 would permit the NYISO or its MMU to respond to requests for such data, so long as all of the requirements and safeguards the NYISO proposes in its filing are satisfied. If the information obtained pointed to possible Market Violations, or to a possible market design flaw, the neighboring ISO's/RTO's MMU would then present the concerns it identified to the Commission's Office of Enforcement or to the Office of Energy Market Regulation, consistent with relevant tariff provisions and the Commission's regulations.

2. Describe under what circumstances, and for what time period, Protected Information would be shared among MMUs and/or RTOs/ISOs prior to sharing that information with the Commission. At what point would the Commission: (1) be informed that this information had been shared; and (2) be provided the same information?

² *See* 18 C.F.R. §§ 35.28(g)(3)(ii)(A) and (C), 35.28(g)(3)(iv) and (v). *See also*, Market Services Tariff section 4.1.7.2, which requires the NYISO to inform its MMU "If the ISO becomes aware that a Customer may be engaging in, or might have engaged in, electric energy market manipulation."

³ *See* Market Services Tariff sections 30.4.5.3.1 (Market Violation) and 30.4.5.4.1 (market design flaw).

As explained above, the NYISO's proposals are not intended to change the obligations that MMUs, ISOs and RTOs already have to report potential problems to the Commission, or the timing of those reports. The NYISO's tariff and the Commission's regulations require referrals to the Commission when a MMU "has reason to believe" that a Market Violation has occurred and where there is "sufficient credible information" to warrant further investigation by the Commission.⁴ A referral is also required when a MMU "has reason to believe market design flaws exist."⁵

The Commission will be informed as soon as a MMU determines (a) that "sufficient credible information" exists to warrant referral of a possible Market Violation to the Commission, or (b) that there is "reason to believe that a market design flaw exists" between two interconnected markets. The information that is required to be included in an MMU referral to the Commission is specified in the Commission's regulations.⁶ Upon receipt of a referral, the Commission could instruct all of the jurisdictional entities that participated in the exchange to turn over all information in their possession that was prepared to assist in the investigation, and request additional information from any non-jurisdictional participants.⁷

A neighboring MMU under the Commission's jurisdiction that requested information from the NYISO pursuant to proposed section 30.6.6.1 would have to comply with the Commission's regulations. The NYISO cannot predict how much time another MMU would require to evaluate any information disclosed by the NYISO or its MMU. However, the NYISO expects that its data sharing proposals would reduce the time a MMU would need to determine whether or not the referral of a possible Market Violation or market design flaw is required.

In the case of a joint investigation, the participating MMU(s) would make referrals to the Commission in compliance with the requirements of their respective market monitoring plans and the Commission's regulations. Thus, the Commission would be informed as soon as a participating MMU determined either (a) that "sufficient credible information" existed to warrant referral of a possible Market Violation to the Commission, or (b) that there was "reason to believe that a market design flaw exists." Once the Commission is made aware of the investigation, the NYISO and its MMU would respond to requests for information, including

⁴ Market Services Tariff section 30.4.5.3.1; *see also*, 18 CFR §§ 35.28(g)(3)(ii)(C), 35.28(g)(3)(iv).

⁵ Market Services Tariff section 30.4.5.4.1; *see also*, 18 CFR §§ 35.28(g)(3)(ii)(A), 35.28(g)(3)(v).

⁶ *See* 18 C.F.R. §§ 35.28(g)(3)(iv)(D), 35.28(g)(3)(v)(D).

⁷ NYISO Market Services Tariff section 30.6.5.6 provides "The Market Monitoring Unit shall respond to information and data requests issued to it by the Commission or its staff. If the Commission or its staff, during the course of an investigation or otherwise, requests Protected Information from the Market Monitoring Unit that is otherwise required to be maintained in confidence, the Market Monitoring Unit shall provide the requested information to the Commission or its staff within the time provided for in the request for information." NYISO Open Access Transmission Tariff section 12.4 provides "If the FERC or its staff, during the course of an investigation or otherwise, requests information from the ISO that is otherwise required to be maintained in confidence pursuant to this section, the ISO shall provide the requested information to the FERC or its Staff within the time provided for in the request for information."

Protected Information, consistent with their existing tariff obligations to provide data and information to the Commission and to Commission Staff.⁸ The NYISO understands that other Commission-jurisdictional ISOs, RTOs, and their MMUs are subject to similar disclosure obligations. The Commission's authority and ability to review the information developed in the course of a joint investigation would be the same as its authority and ability to review the information developed by one ISO/RTO or MMU conducting a unilateral investigation within its own market.

3. With regard to the release of Protected Information described in 30.6.6.1, how would the NYISO or the MMU ensure that a Requesting Entity would not release information to another party?

The NYISO's proposals require a Requesting Entity to meet a high standard in demonstrating its capacity and commitment to maintaining the confidentiality of any Protected Information provided by the NYISO or the MMU. In effect, the proposals require the Requesting Entity to apply at least the same level of protection for NYISO data that the NYISO is required to give to Confidential and Protected Information under its own tariffs. At the same time, the proposals recognize that the Requesting Entity may be subject to legal obligations that can ultimately result in the further disclosure of the Protected Information. The NYISO believes its proposals sufficiently address the risk of additional disclosures.

Proposed section 30.6.6.1 requires a Requesting Entity to either (a) show that its Tariffs or other Governing Documents include all of the protections required in proposed section 30.6.6.1.1, or (b) to execute a Non-Disclosure Agreement that includes the same protections before the NYISO discloses any Protected Information to that Requesting Entity. Proposed Tariff Sections 30.6.6.1.1(1) and (2) require the Requesting Entity to (1) protect the shared information from disclosure, and (2) be subject to an ongoing, legally enforceable obligation, to protect the confidentiality of the information that is shared.

The NYISO expects that a violation by a jurisdictional ISO, RTO or the MMU associated with a jurisdictional ISO or RTO, would be reported to the Commission as soon as it was discovered. Moreover, it isn't clear to the NYISO how the obligation of a Commission-jurisdictional ISO or RTO (or the MMU of a Commission-jurisdictional ISO or RTO) to protect shared information differs from its obligation to protect any of the other confidential information in its possession. With regard to non-jurisdictional entities (primarily the Independent Electricity System Operator of Ontario), the NYISO believes that the potential benefit of permitting information sharing outweighs the potential risk of disclosure (which the NYISO views as slight).

Service

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, to the official representative of each of its customers, to each participant

⁸ See footnote 7, *supra*.

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.

Conclusion

The NYISO appreciates this opportunity to respond to the Commission's concerns. For the foregoing reasons, the NYISO respectfully requests that the Commission accept for filing the proposed tariff revisions it submitted on April 6, 2011.

Respectfully submitted,

/s/Elizabeth A. Grisaru

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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 21st day of June, 2011.

/s/ Joy Zimmerlin

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