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June 30, 2011

VIA ELECTRONIC FILING

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

Re: *New York Independent System Operator, Inc.*, Order No. 741 Compliance Filing Docket No. RM10-13, Request for Delayed Effective Date, and Request for Limited Waiver -- Supplemental Filing

The New York Independent System Operator, Inc. ("NYISO") respectfully submits the enclosed tariff revisions in compliance with the Commission's final rule on *Credit Reforms in Organized Wholesale Electric Markets* ("Order No. 741")[1], the Commission's *Order on Rehearing* ("Order No. 741-A")[2], and Section 35.47 of the Commission's regulations. This compliance filing proposes a number of revisions to the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") and Open Access Transmission Tariff ("OATT") in response to the Commission's directives on credit reforms.[3]

As discussed in detail below, the proposed tariff revisions modify the Services Tariff and the OATT to: (i) establish billing and settlement periods of no more than seven days each; (ii) limit the amount of unsecured credit extended to any one market participant or affiliated group of market participants to $50 million; (iii) establish minimum participation criteria for market

[1] Order No. 741, 75 Fed. Reg. 65,942 (Oct. 21, 2010) (amending 18 C.F.R. pt. 35), FERC Stats. & Regs. ¶ 31,317 (2010), 133 FERC ¶ 61,060 (2010).

[2] Order No. 741-A, 76 Fed. Reg. 10,492 (Feb. 17, 2011) (amending 18 C.F.R. pt. 35), FERC Stats. & Regs. ¶ 31,320 (2011), 134 FERC ¶ 61,126 (2011).

[3] Capitalized terms used but not defined in this filing shall have the meanings given to them in the Services Tariff and OATT.

participants related to financial risks; (iv) eliminate unsecured credit in the TCC market;[4] (v) limit to no more than two days the time period permitted for a market participant to meet a collateral call; and (vi) provide examples of circumstances that may justify the NYISO's invocation of the "material adverse change" provision of its creditworthiness policy.

The proposed tariff revisions comply with the requirements of Order No. 741 and Order No. 741-A. The NYISO, therefore, respectfully asks that the Commission accept this filing as described in this letter. In addition, the NYISO respectfully requests that the Commission approve a delayed effective date for certain of the proposed tariff revisions, as explained in Section IV below, and a limited waiver of Section 7.4.2.2 of the Services Tariff and Section 2.7.4.3.2 of the OATT, as explained in Section V below, to facilitate a seamless transition to weekly invoicing.

The NYISO will make a second filing, consistent with the Commission's directive in Order No. 741-A, to comply with the Commission's requirements regarding the ability to offset market obligations.

I. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents:

1. This filing letter;
2. A clean version of the proposed revisions to the ISO Agreement (Attachment I); and
3. A blacklined version of the proposed revisions to the ISO Agreement (Attachment II).

The proposed revisions to the ISO Agreement are part of a package of revisions to the ISO Tariffs and ISO Related Agreements that the NYISO is proposing in accordance with the Commission's directive in Order No. 741. Earlier today the NYISO submitted, in this same docket, proposed revisions to the OATT and the Services Tariff. As stated in that filing, the NYISO is making this supplemental filing because the NYISO is unable to electronically submit proposed revisions to ISO Related Agreements at the same time as it electronically submits proposed revisions to the ISO Tariffs due to technical restrictions imposed by the eTariff system. This filing letter, with the exception of this Section I, is identical to the filing letter submitted earlier today.

[4] In the NYISO marketplace, "financial transmission rights" are known as Transmission Congestion Contracts (TCCs).

II. COMMUNICATIONS AND CORRESPONDENCE

Copies of correspondence concerning this filing should be served on:

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III. DESCRIPTION OF PROPOSED COMPLIANCE TARIFF REVISIONS

A. Stakeholder Involvement

The tariff revisions proposed in this filing are the product of extensive discussions with market participants both before and after the issuance of Order Nos. 741 and 741-A. Since the issuance of Order No. 741, the NYISO has held six meetings with its Credit Policy Working Group to discuss and refine its approach for complying with the Commission's requirements. Prior to the issuance of Order No. 741, the NYISO spent nearly two years working with market participants to discuss and develop a consensus approach to weekly invoicing and has since held eight meetings with its Billing and Accounting Working Group to plan the transition to weekly invoicing. For each of these meetings, the NYISO followed its customary practice of posting the meeting presentations, draft tariff revisions, and other relevant materials, including a calendar of all invoicing and settlement dates through 2012, to its website at least three business days prior to the scheduled meeting. In addition, the NYISO sent notice of each meeting, along with copies

[5] The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2011) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, VA.

of the meeting materials, to the credit contact and billing contact for each market participant as well as to the working group members.

The NYISO also had numerous conversations with individual market participants. In response to market participant feedback, the NYISO revised many of its initially proposed tariff revisions, in particular with respect to minimum participation criteria, to minimize the financial and administrative impact on market participants while continuing to reduce overall market risk. In addition, the NYISO coordinated extensively with the other ISOs/RTOs to discuss the Commission's directive and develop, to the extent practicable, consistent rules across the ISO/RTO markets.

The tariff revisions proposed in this filing have been developed with considerable market participant input and carefully tailored to strike an important balance between protecting the NYISO and its market participants against losses attributable to non-payment without creating undue barriers to entry or excessive burdens for market participants.

B. Shortening the NYISO Settlement Cycle

Article 7 of the Services Tariff and Article 2.7 of the OATT establish the NYISO's settlement process. Pursuant to Section 7.2 of the Services Tariff and Section 2.7.3 of the OATT, the NYISO currently issues invoices to customers on a monthly basis, with the exception of certain settlements related to TCC auctions that are settled on a separate, shorter timeframe.[6] Specifically, the NYISO issues an invoice to a customer within five business days of the first day of each month for the net amount owed by or owed to the customer for each of the services furnished under the NYISO tariffs in the preceding month. Customers must then pay any amounts due by the first banking day common to all parties after the 15th day of that month. The NYISO must then pay all amounts due to a customer by the first banking day common to all parties after the 19th day of that month.

In Order No. 741, the Commission directed ISOs/RTOs to revise their settlement cycles "to establish billing periods of no more than seven days and settlement periods of no more than seven days after issuance of bills."[7] The NYISO has, in coordination with its stakeholders in its Billing and Accounting Working Group and Credit Policy Working Group, developed a weekly settlement process in accordance with the principles set forth in Order No. 741.

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[6] The NYISO makes settlements in connection with Centralized TCC Auctions and Reconfiguration Auctions on a separate, shorter settlement timeframe as set forth in Section 4.7 of the NYISO TCC Manual. Pursuant to these rules, customers must pay any amount owed for their auction activity within three days of the issuance of Award Notices for the auction. The NYISO must pay any amount owed to customers for their auction activity within six days of the issuance of Award Notices for the auction. In addition, the NYISO must allocate any Net Auction Revenues to Transmission Owners within the auction specific timeframes posted by the NYISO. After transitioning to weekly invoicing, the NYISO will continue to make settlements and allocate Net Auction Revenues in connection with Centralized TCC Auctions and Reconfiguration Auctions in accordance with these timeframes.

[7] Order No. 741 at P 32.

1. NYISO Weekly Settlement Process

The NYISO proposes to revise Section 7.2 of the Services Tariff and Section 2.7.3 of the OATT to establish a weekly settlement process, which will function as described below.[8]

The NYISO will issue invoices to customers on a weekly basis, as described below, to bill for approximately 99% of the dollar volume of market transactions furnished under the NYISO tariffs (the "Weekly Invoice Components"). The NYISO will continue to invoice customers on a monthly basis, as described below, to bill for the remaining 1% of the dollar volume of market transactions furnished under the NYISO tariffs (the "Monthly Invoice Components"). The Monthly Invoice Components will be limited to: (i) true-ups and adjustments of previous settlement amounts as accurate data replaces initial estimates; (ii) penalty and dispute settlement amounts; and (iii) a small number of *de minimis* initial settlements.

The NYISO will establish a standard seven day billing period for the settlement of Weekly Invoice Components that will run from Saturday to Friday ("Complete Week Settlement Period"). At the request of NYISO market participants, a billing period will not cross over months to minimize the impact of the revised settlement process on market participants' existing settlement systems and processes. Therefore, if a Saturday to Friday period is interrupted by a change in month, the standard seven day billing period will be divided into two separate billing periods ("Stub Week Settlement Periods"). A Stub Week Settlement Period that begins a month will run from the first day of the month until the first Friday of that month. A Stub Week Settlement Period that concludes a month will run from the last Saturday of the month until the last day of that month.

On or about each Wednesday,[9] the NYISO will issue an invoice for the net amount owed by or owed to the customer for the Weekly Invoice Components for the previous Complete Week Settlement Period or Stub Week Settlement Period that begins a month. The NYISO will continue to issue a monthly invoice within five business days after the first day of each month in which the NYISO will invoice a customer for the net amount owed by or owed to the customer for: (i) Weekly Invoice Components for a Stub Week Settlement Period that concludes a month; (ii) Monthly Invoice Components for the preceding month; (iii) any true-ups to weekly invoices issued in the preceding month; (iv) any true-ups to monthly invoices issued four-months previously; and (v) any true-ups to previously issued monthly invoices that are being finalized.

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[8] As part of the proposed revisions, the NYISO will relocate certain existing provisions within Section 7.2 of the Services Tariff and Section 2.7.3 of the OATT.

[9] The NYISO may issue invoices on a date other than Wednesday (i) in instances in which a weekly and monthly invoice would otherwise be issued on the same date to avoid certain invoice reconciliation issues that could arise and (ii) to accommodate holidays.

Customers must pay any amount due for the weekly invoice or the monthly invoice by the first banking day common to all customers that falls on the second business day after the NYISO's issuance of the weekly or monthly invoice. The NYISO must then pay all amounts due to a customer in its weekly invoice or monthly invoice by the first banking day common to all customers that falls on or after the second business day after the due date for the customer's payment.

2. Revisions to Facilitate Decrease in Energy and Ancillary Services Credit Requirement, Modify Terms of Prepayment Agreement, and Eliminate Pay-down Program

Services Tariff Section 26, Attachment K ("Attachment K") prescribes the NYISO's creditworthiness requirements for customers.[10] Section 26.3.2.1 of Attachment K sets forth the formula for determining a customer's credit requirement for purchases of energy and ancillary services. Under this formula, the NYISO calculates a customer's estimated daily payment obligation for purchases of energy and ancillary services, then multiples this estimate by 50 to determine the amount of the customer's energy credit requirement. The NYISO uses a multiplier of 50 because under the NYISO's current monthly invoicing and settlement cycle, a customer could accrue charges for purchases of energy and ancillary services for up to 50 days before having to make payment to the NYISO.

Once the NYISO transitions to a weekly billing and settlement cycle, the NYISO's credit exposure related to a customer's purchase of energy and ancillary services will be reduced from 50 days to 16 days. Accordingly, the NYISO is proposing to revise Section 26.3.2.1(a) of Attachment K to reduce the credit requirement multiplier from 50 to 16.

Section 26.3.2.1(b) of Attachment K allows a customer that enters into a prepayment agreement with the NYISO, in the form set forth in Appendix K-1 to Attachment K, to reduce the multiplier for calculating the customer's energy and ancillary services credit requirement from 50 days to 3 days. Under the terms of the prepayment agreement in Appendix K-1, the customer is required to prepay the NYISO each week for the estimated charges the customer will incur for purchases of energy and ancillary services during the following week. The NYISO is proposing to revise the terms of the form prepayment agreement to modify the timing of the weekly prepayments to align with the timing of the weekly settlement cycle.

The NYISO is also proposing to delete Section 26.5.3 of Attachment K to eliminate its pay-down program. The pay-down program allows a customer to reduce its energy and ancillary services credit requirement by paying the NYISO for its energy and ancillary services purchases to the extent these purchases exceed the customer's unsecured credit and collateral. With the transition to weekly invoicing, customers will automatically pay for these purchases weekly.

[10] Services Tariff Section 26, Attachment K is incorporated by reference into OATT Section 29, Attachment W.

3. Revisions to Facilitate Decrease in Working Capital Fund Balance

Pursuant to OATT Section 28, Attachment V ("Attachment V"), the NYISO maintains a Working Capital Fund (with funds contributed by market participants) that the NYISO may use to cover market participant non-payments or to temporarily offset imbalances in NYISO cash flows. Section 28.1 of Attachment V provides that the NYISO's Board of Directors shall determine the amount of the Working Capital Fund.

Section 28.3 of Attachment V provides a mechanism for the NYISO to collect additional contributions from market participants in the event the Board of Directors increases the amount of the Working Capital Fund. However, there is no mechanism in Attachment V through which the NYISO could return excess contributions to market participants in the event the Board of Directors decreases the amount of the Working Capital Fund.

As a result of implementing a shortened settlement cycle, the NYISO has determined that it can reduce the Working Capital Fund balance after it transitions to weekly invoicing and maintain the same level of liquidity. The NYISO is proposing to revise Attachment V by inserting a new Section 28.4 that will provide a mechanism for the NYISO, at its discretion, to decrease the Working Capital Fund reserve and return the excess contributions to market participants on a pro rata basis. The NYISO currently plans on reducing the Working Capital Fund balance in November 2011.

4. Additional Revisions to Accommodate NYISO Weekly Settlement Process

The NYISO proposes to make the following additional revisions to its tariffs and agreements to accommodate the changeover to a weekly settlement process:

- The NYISO tariffs currently include descriptions of "monthly" charges and payments. The NYISO proposes to replace the references in its tariffs to "monthly" charges and payments, as used throughout the Services Tariff and the OATT, with a new term "Billing Period." For example, the NYISO proposes to revise Section 6.1.2.2 of Rate Schedule 1 of the OATT to replace the term "monthly" in the description of and formula for the calculation of the NYISO annual budget charge with the term "Billing Period." The appropriate "Billing Period" for each charge or payment (i.e., weekly or monthly) will be designated in accordance with Article 7 of the Services Tariff, Article 2.7 of the OATT, and ISO Procedures. Other tariff sections affected by this change include Services Tariff Sections 4.1.8, 4.7.5, 7.3, 15.2, 15.5, 15.6, and 15.7, and OATT Sections 2.7.4, 6.1, 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11, and 6.12.

- The NYISO tariffs currently establish that the NYISO will divide certain annual amounts by twelve to determine the appropriate amount for each monthly invoice. For example, Section 15.5.3.1 of Rate Schedule 5 of the Services Tariff indicates that generators that provide black start and system restoration service in the Consolidated Edison service territory shall receive twelve equal payments of an annual payment amount. The NYISO proposes to revise these provisions to indicate that the customer will receive or pay the pro rata share of the annual amount that is allocated for that Billing Period, which will allow such amounts to be calculated for a weekly or monthly invoice, as appropriate. Other tariff sections affected by this change include Services Tariff Section 15.2.2 and OATT Section 6.10.3.4.

- Section 17.02 of the ISO Agreement describes a monthly settlement process. The NYISO proposes to revise this section to reference the settlement process set forth in the NYISO tariffs.

- Section 2.7.3.1 of the OATT and Section 7.2.1 of the Services Tariff (revised Section 2.7.3.4 of the OATT and Section 7.2.4 of the Services Tariff) establish that the NYISO may use estimated data in settling an invoice and provides for true-ups to such settlements as more accurate data becomes available. The NYISO proposes to revise these provisions to reference both weekly and monthly invoices and to clarify that data in weekly invoices may be trued-up in monthly invoices.

- Section 2.7.3.1 of the OATT and Section 7.2.1 of the Services Tariff (revised Section 2.7.3.4 of the OATT and Section 7.2.4 of the Services Tariff) set forth that trued-up charges shall include interest from the first due date of the charge. The NYISO proposes to revise these provisions to provide that interest in the trued-up charge is calculated from the weekly or monthly, as appropriate, due date of the charge.

- Sections 2.7.3.2 and 2.7.3.3 of the OATT and Sections 7.2.2 and 7.2.3 of the Services Tariff (revised Section 2.7.3.5 of the OATT and Section 7.2.5 of the Services Tariff) establish that the NYISO and customers make payments by wire transfer. The NYISO proposes to revise these provisions to provide that under the proposed weekly settlement process the NYISO and customers may use wire transfer or any other method set forth in NYISO procedures to make payments.

- Sections 7.2.1, 7.2.2, and 7.2.3 of the Services Tariff (revised Section 7.2.6 of the Services Tariff) provide that the NYISO make settlements in connection with the purchase and sale of TCCs in the Centralized TCC Auction and Reconfiguration Auction, and allocate Net Auction Revenues to Transmission Owners, in accordance with the settlement timeframe set forth in ISO Procedures. The NYISO proposes to consolidate and relocate these tariff provisions into a new Section 7.2.6 of the Services Tariff and add a parallel provision in the OATT as new Section 2.7.3.7. The NYISO is also proposing to add a cross-reference in these tariff provisions to Section 19.9.6 of Attachment M of the OATT to reference the appropriate procedures for making these settlements. In addition, customers do not obtain TCCs solely through auctions (e.g., Fixed Price TCCs). For this reason, the NYISO proposes to clarify in new Section 7.2.6 of the Services Tariff and new Section 2.7.3.7 of the OATT that it will continue to make settlements in connection with the acquisition of TCCs through non-auction processes in accordance with the separate settlement timeframes set forth in ISO Procedures.

- The NYISO proposes to remove certain historical and unnecessary language from the NYISO's billing and settlement provisions that will not be applied as part of the weekly settlement process. Specifically, the NYISO proposes to remove the settlement review and correction provisions for services furnished before January 1, 2009, in Section 7.4.1 of the Services Tariff and Section 2.7.4.2 of the OATT as the NYISO has already finalized all settlements issued prior to January 2009. In addition, the NYISO proposes to remove the references in Section 7.2.1 of the Services Tariff and Section 2.7.3.1 of the OATT providing customers with settlement data through a Bid/Post System or transmitting settlement data to customers. The NYISO will, instead, make weekly settlement data electronically available to customers. The NYISO also proposes to remove the references to "ISO Procedures" in Section 7.2.4 of the Services Tariff and Section 2.7.3.4 of the OATT (revised Section 7.2.7 of the Services Tariff and Section 2.7.3.6 of the OATT) as they are unnecessary.

- The NYISO proposes to revise Section 7.1 of the Services Tariff and Section 2.7.1 of the OATT to clarify that the NYISO currently maintains more than one account for settlement purposes.

- The NYISO proposes to revise cross-references throughout its tariffs consistent with the proposed changes to Article 7 of the Services Tariff and Article 2.7 of the OATT.

C. Use of Unsecured Credit

Section 26.4.2 of Attachment K limits the amount of unsecured credit available to any one NYISO market participant to $150 million, subject to a limited exception for Investment Grade customers that have a legal right to recover costs from end-users and that use their unsecured credit to fulfill Native Load Credit Requirements only. In such cases, the Investment Grade customer could receive unsecured credit in an amount up to $250 million.

In Order No. 741, the Commission directed ISOs/RTOs "to establish a limit on unsecured credit of no more than $50 million per market participant" with "a maximum level of $100 million for all entities within a corporate family."[11] In Order No. 741-A, the Commission lowered the limit on unsecured credit for all entities within a corporate family to "no more than $50 million per entity, including the corporate family to which an entity belongs."[12] In Order

[11] Order No. 741 at PP 51-52.

[12] Order No. 741-A at P 9.

No. 741-B, the Commission denied all requests for rehearing and upheld its decision in Order No. 741-A to eliminate the separate $100 million cap on unsecured credit for corporate families.[13] The Commission noted in Order No. 741 that an ISO/RTO could choose to set a lower limit for any individual market participant, but rejected the notion that a customer with a legal right to recover costs is inherently more creditworthy than other customers and, therefore, should not be subject to the same cap.[14] Specifically, the Commission stated as follows:

> Regulated entities, even those with cost-of-service rates, do not necessarily have a revenue stream guaranteed to cover wholesale market costs, and thus should not be assumed to be without risk of default.[15]

To comply with these directives, the NYISO proposes to revise Section 26.4.2 of Attachment K to cap the amount of unsecured credit extended to any one customer, or group of customers that are Affiliates, at $50 million. The $50 million limit will apply uniformly to all sectors of market participants, including those that have a legal right to recover costs. The NYISO also proposes to delete the definition of "Native Load Credit Requirement" and eliminate from Sections 26.4.2 and 26.4.3.6 the right of market participants to approve an indexing methodology that would increase the NYISO's unsecured credit limit as these provisions are no longer necessary.

In addition, to facilitate the NYISO's administration of this $50 million limit on unsecured credit to all members of a corporate family, the NYISO has added a new tariff provision to the end of Section 26.4.1 of Attachment K. This provision provides that a market participant that fails to maintain a complete and accurate list of its affiliates with the NYISO in accordance with NYISO tariff requirements is not eligible for unsecured credit.

Consistent with Order No. 741, the NYISO is proposing to clarify in Sections 26.4 and 26.4.1 of Attachment K that affiliate guarantees are considered a form of unsecured credit and subject to the $50 million cap.[16] The NYISO will also make this clarification by relocating Section 26.5.1.3, which establishes requirements related to the use of affiliate guarantees, from Section 26.5.1 of Attachment K, which describes acceptable forms of collateral, to revised Section 26.5.4 of Attachment K, which establishes parameters related to unsecured credit.

D. Minimum Criteria for Market Participation

Section 8 of the Services Tariff sets forth eligibility requirements applicable to all customers participating in the NYISO-administered markets and all applicants seeking to

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[13] Order No. 741-B (denying rehearing of Order No. 741-A), 135 FERC ¶ 61,242 (2011).

[14] Order No. 741 at PP 52 and 57.

[15] *Id.* at P 57.

[16] *Id.* at P 56.

become customers. Pursuant to Sections 8.1.1 and 8.1.2 of the Services Tariff, each customer is subject to the NYISO's creditworthiness requirements set forth in Attachment K and must also demonstrate that it is capable of performing all operational communication requirements.

In Order No. 741, the Commission directed each ISO/RTO to propose tariff revisions to establish minimum participation criteria.[17] The Commission did not prescribe standardized minimum participation criteria but instead directed each ISO/RTO to develop these criteria through their stakeholder processes. The Commission stated, however, that "requirements related to adequate capitalization and risk management controls . . . will help protect the markets from risks posed by under-capitalized participants or those who do not have adequate risk management procedures in place."[18] In addition, the Commission expressly rejected "the argument that minimum criteria are not necessary if ISOs and RTOs apply vigorous standards in determining the creditworthiness of each market participant."[19]

The NYISO is proposing to add a new Section 26.1 to Attachment K to set forth minimum participation criteria in compliance with Order No. 741. The NYISO will also add cross-references in Sections 8.1 and 8.2 of the Services Tariff to the minimum participation criteria in Attachment K of the Services Tariff. These criteria will mitigate risks posed by customers that (i) are thinly capitalized, (ii) lack adequate risk management practices, (iii) lack adequate expertise to transact in ISO-administered markets, and/or (iv) lack the ability to promptly respond to financial-related communications and directions from the NYISO. The proposed minimum participation criteria will form a part of the NYISO's overall eligibility requirements and will apply to all customers participating in the NYISO-administered markets and all applicants seeking to become customers.[20]

To meet the capitalization requirement, a customer, or its guarantor, must demonstrate, based on its most recent audited financial statements, that it has either \$10 million in assets or \$1 million in tangible net worth. These thresholds are consistent with thresholds accepted by the Commodity Futures Trading Commission and the Securities Exchange Commission as important indicators of a company's sophistication and ability to assume a loss of investment without

[17] *Id.* at P 132.

[18] *Id.* at P 131.

[19] *Id.* at P 134.

[20] The NYISO is working to secure an exemption pursuant to Section 4(c)(6) of the Commodity Exchange Act from all provisions of that Act and all of the Commodity Futures Trading Commission's ("CFTC's") regulations thereunder, except for those granting the authority to address fraud and manipulation. In response to concerns expressed by the CFTC regarding risk management practices, the NYISO plans to work with market participants to enhance the risk management provisions described above so as to require, in appropriate circumstances, submission and verification of an entity's risk management procedures. The NYISO may supplement this filing, as appropriate, after undertaking these discussions with market participants.

causing severe damage to the company's overall net worth.[21] Well capitalized market participants are less likely to default in the event of market fluctuations that lead to unexpected losses because they have more resources available to cover these losses.

The NYISO recognizes that some of its existing market participants are not capable of meeting the proposed capitalization requirement. For this reason, the NYISO is also proposing to allow market participants to post $200,000 in security ($500,000 if participating in the TCC market) with the NYISO, in lieu of satisfying the capitalization requirement. This security is in addition to any collateral required to satisfy the market participant's credit requirements. This alternative to the capitalization requirement will allow the NYISO to reduce overall market risk without creating undue barriers to market entry. With limited exceptions, an additional $200,000 in collateral would have covered most NYISO historical bad debt losses. The NYISO set a higher amount for TCC market participants because, as the Commission recognizes, the duration of TCCs creates unique risks that are difficult to quantify and that distinguish TCCs from other wholesale electric market products.[22]

The NYISO is also proposing to implement a requirement that each market participant submit a certificate annually, signed by a duly authorized officer, to verify that the market participant is in compliance with all minimum participation criteria. The NYISO will require market participants to certify that:

1) the market participant has written risk management policies and procedures that address those risks that could materially and adversely affect the market participant's ability to pay its NYISO invoices when due;
2) all employees and agents of the market participant with the right to bid, offer, or schedule in the NYISO-administered markets have appropriate training and/or experience to transact in such markets;
3) the market participant has appropriate personnel resources and technical abilities to allow the market participant to promptly and effectively respond to all communications and directions from the NYISO related to settlements, billing, credit requirements, and other financial matters; and
4) the market participant is in compliance with the NYISO's minimum capitalization requirements.

The proposed tariff revisions also establish minimum training requirements for market participants that participate in the TCC market and/or engage in Virtual Transactions. Each

[21] *See* Commodity Exchange Act, 7 U.S.C. § 1a(12)(v) (2010); Securities Exchange Act of 1934, 15 U.S.C. § 78c(54)(2010).

[22] *See* Order No. 741 at P 70-72.

employee and agent of a market participant with the right to bid on TCCs or Virtual Transactions must complete one-time training specific to those products. The NYISO currently offers free training on-line and anticipates offering free, enhanced Virtual Transaction and TCC training online no later than September 1, 2011. The enhanced training will include a test to evaluate user understanding and successful completion of the training course.

E. Elimination of Unsecured Credit in TCC Market

The NYISO revised its tariffs, effective November 12, 2009, to disallow the use of unsecured credit to meet TCC credit requirements with the exception of credit requirements related to Fixed Price TCCs.[23]

In Order No. 741, the Commission directed ISOs/RTOs to propose tariff revisions "to eliminate the use of unsecured credit in its FTR, or FTR-equivalent, markets."[24] In addition, the Commission stated that Order No. 741 "does not provide exemptions for holders of 'fixed price TCCs,' or other products, from the prohibition on the use of unsecured credit in this market as they may vary in value despite being called 'fixed price.'"[25]

The NYISO is proposing to revise Sections 26.4 and 26.5 of Attachment K to disallow the use of unsecured credit to meet TCC credit requirements related to Fixed Price TCCs.

F. Grace Period to "Cure" Collateral Posting

In Order No. 741, the Commission directed ISOs/RTOs to establish a two-day limit on the amount of time given a market participant to post collateral in response to a request for additional collateral by the ISO/RTO.[26] The NYISO is proposing to add a new Section 26.10 to Attachment K to specify that a market participant shall have no more than two business days to cure a collateral shortfall.

G. Use of "Material Adverse Change"

Section 26.10 of Attachment K currently allows the NYISO to reduce the amount of unsecured credit granted to a customer or request additional collateral from a customer in the event that there is a "material adverse change" affecting the risk of nonpayment by the customer.

In Order No. 741, the Commission directed ISOs/RTOs to propose tariff revisions that provide examples of circumstances that entitle the market administrator to invoke a material

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[23] *New York Independent System Operator, Inc.*, Docket Nos. ER09-1612-000 and ER09-1612-001 (Nov. 4, 2009).

[24] Order No. 741 at P 75.

[25] *Id.* at P 79.

[26] *Id.* at P 160.

adverse change clause.[27] In addition, the Commission also directed ISOs/RTOs to provide written notice to a market participant that is subject to a material adverse change provision that provides the reason for the invocation of the provision.[28] However, the Commission also made clear in Order No. 741 that "the tariff provisions should allow the ISOs and RTOs to use their discretion to request additional collateral in response to unusual or unforeseen circumstances."[29]

Consistent with the Commission's directive, the NYISO is proposing revisions to the material adverse change provision in its tariffs (revised Section 26.12 of Attachment K) to provide an illustrative, but not exhaustive, list of examples of circumstances that would entitle the NYISO to invoke the provision. In addition, the NYISO has included a requirement that it will provide affected customers with a written explanation of the reasons for its decision.

H. Net Receivables as Cash Collateral

Section 26.5.1.5 of Attachment K allows a customer to treat as cash collateral the amount the NYISO determines will be owed to the Customer as of the day after the next regular monthly payment to the Customer. Under the NYISO's existing monthly invoicing cycle, this provision allows a customer to treat as cash collateral the net receivable the customer has accrued as of approximately the 20th day of a month, which amount the NYISO anticipates it will have to pay to the customer the following month. In conjunction with the NYISO's transition to weekly invoicing, the NYISO is proposing to revise this provision to allow a customer to treat as cash collateral, as of the day after the NYISO makes its weekly settlement payments, the net receivable the customer has accrued for its prior week activity, which amount the NYISO will pay to the customer the following week.

The NYISO is also proposing to revise Section 26.5.1.5 of Attachment K to require a customer to enter into a security agreement with the NYISO in order for the customer to treat its net receivable amount as cash collateral. The security agreement must grant the NYISO a first priority lien on the customer's NYISO receivables. By allowing a customer to elect to treat its net receivable for a billing period as cash collateral, pursuant to Section 26.5.1.5 of Attachment K, the NYISO, to this limited extent, is permitting the customer to net across product and service categories. The proposed revision will protect the NYISO's position as a secured creditor and support its right to these funds in the event the market participant files for bankruptcy

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[27] *Id.* at P 149.

[28] *Id.* at P 151.

[29] *Id.* at P 147.

protection.[30] This change is consistent with the Commission's directive in Order No. 741 to establish better protection against loss in the event of a market participant bankruptcy.[31]

IV. EFFECTIVE DATE AND REQUEST FOR SHORT DELAY IN EFFECTIVE DATE FOR REDUCTION IN CAP ON UNSECURED CREDIT

With the exception of certain tariff revisions described in Section III.B.2 and Section III.C of this letter, as discussed below, the NYISO respectfully requests that this filing become effective on October 1, 2011, which date is consistent with the effective date prescribed by Order No. 741.

With respect to the tariff revisions to (i) decrease the energy and ancillary services credit requirement (revised Section 26.4.2.1 of Attachment K), and (ii) cap the amount of unsecured credit at $50 million (revised Sections 26.5.2, 26.5.3.6, and 26.6.3 of Attachment K), as described in Sections III.B.2 and III.C of this letter, the NYISO respectfully requests that these revisions become effective on October 18, 2011, which date is slightly later than the October 1, 2011 effective date prescribed by Order No. 741.

The NYISO is requesting a delayed effective date for these specific tariff revisions because invoices that the NYISO issues in October 2011 for services furnished before October 1, 2011, will be settled in accordance with the NYISO's current monthly settlement process. As such, the NYISO will not receive payment from market participants for September 2011 purchases until October 17, 2011 and does not want to reduce credit requirements until after it has collected these funds. Likewise, the NYISO is proposing to allow market participants to continue using their unsecured credit up to existing credit limits to meet the higher credit requirements related to the current monthly settlement process and delay until October 18, 2011 the date the NYISO establishes a $50 million cap on unsecured credit.

V. REQUEST FOR LIMITED WAVIER TO POSTPONE BY ONE MONTH THE ISSUANCE OF DECEMBER 2010 CLOSE-OUT INVOICES

The NYISO respectfully requests a limited waiver of Section 7.4.2.2 of the Services Tariff and Section 2.7.4.3.2 of the OATT to permit the NYISO to postpone by one month the NYISO's issuance of customers' December 2010 invoices for their final review and close-out. To accommodate weekly invoicing, the NYISO is changing to a new invoice platform in August

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[30] This change does not impact the NYISO's practice of netting a market participant's purchases and sales within a product or service category when establishing the market participant's credit requirement for that product or service category. As mentioned earlier in this filing letter, the NYISO will make a separate filing, consistent with the Commission's directive in Order No. 741-A, to comply with the Commission's requirements regarding the ability to offset market obligations.

[31] *See, e.g.,* Order No. 741 at P 119.

2011 and will not be able to issue the December 2010 invoices for final review and close-out until the new platform is in place in September 2011.[32]

Section 7.4.2 of the Services Tariff and Section 2.7.4.3 of the OATT establish a process for the NYISO and customers to review, challenge, and correct the data related to customers' monthly invoices. As part of this process, Section 7.4.2.2 of the Services Tariff and Section 2.7.4.3.2 of the OATT provide that the NYISO will issue a customer's monthly invoice for a final twenty-five day review period approximately seven months after the NYISO's initial issuance of that invoice. If customers do not identify any errors during this review period, the NYISO will then issue to the customer its final, closed-out invoice for that month. The NYISO was originally scheduled to issue customers' December 2010 invoices for their final review period in August 2011. However, as part of its changeover to weekly invoicing, the NYISO is completing an update to its invoice platform in August 2011. As the old and new platforms are not compatible with one another, the NYISO cannot issue the December 2010 final review invoices until the new platform is in place. For this reason, the NYISO seeks this limited waiver to permit it to issue customers' December 2010 invoices for final review in September 2011, with the close out invoices to be issued in October 2011.

The Commission's evaluation of whether it should permit tariff waivers has focused on several key points, including whether: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.[33] In this case, the waiver is necessary as the NYISO is not able to issue the December 2010 related invoices until the platform changes to accommodate weekly invoicing have been completed. The NYISO is acting in good faith to ensure that the new invoice platform is implemented with minimal disruption to the existing settlement process. The NYISO has informed its customers of the temporary invoice postponement and has not received any objections. The duration and scope of the requested waiver are limited. The waiver will also not have undesirable consequences as customers will still have their regular twenty-five day period for reviewing invoices prior to close-out. In this regard, the NYISO notes that Section 7.4.2.2 of the Services Tariff provides for a delay of up to six months in the issuance of an invoice for final review if the NYISO requires a longer evaluation period due to extraordinary circumstances. It also provides for the delayed issuance of an invoice for final review if necessary to complete the dispute resolution process established

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[32] The NYISO recognizes that the Commission discourages incorporating items into a compliance filing that are not expressly required by the Commission's order. However, the Commission has previously permitted such items when they are needed to implement the changes required by the Commission's order. *See New York Independent System Operator, Inc.*, 125 FERC 61,206 at P 41 (November 28, 2008). In this instance, the NYISO requires the requested waiver to administer its existing settlement process while implementing the system changes needed for the weekly invoicing process required by Order No. 741.

[33] *ISO New England, Inc.*, 117 FERC ¶ 61,171 at P 21 (2006); *see also Wisvest-Connecticut*, 101 FERC ¶ 62,551 (observing that errors was "an inadvertent mishap"); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996).

by Section 7.4.3 of the Services Tariff. The NYISO, therefore, respectfully requests that the Commission grant a limited waiver of Section 7.4.2.2 of the Services Tariff and Section 2.7.4.3.2 of the OATT as described herein.

VI. SERVICE

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail 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.

VII. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission take action as requested herein.

Respectfully submitted,

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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 30th day of June, 2011.

/s/ Joy Zimberlin

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