

November 15, 2010

Submitted Electronically

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

Re: New York Independent System Operator, Inc.'s Compliance Filing in Docket
Nos. ER10-2062-____ and ER10-1977-____

Dear Ms. Bose:

In compliance with the Commission's Orders *Accepting and Suspending Tariff Revisions Subject to Conditions* that were issued in Docket Nos. ER10-1977-000, *et al.*¹ ("IBRT Order") and ER10-2062-000, *et al.*² ("RLS Order") on September 29, 2010 (collectively the "September 29 Orders") the New York Independent System Operator, Inc. ("NYISO") hereby submits proposed revisions to the Market Power Mitigation Measures ("Mitigation Measures")³ and Market Monitoring Plan⁴ that are attachments to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). The September 29 Orders accepted, subject to the compliance obligations addressed in this filing, proposed revisions to the NYISO's Services Tariff to permit the NYISO to: (1) implement enhanced generator reference level development software ("RLS") functionality; and (2) implement new market rules that permit Generators to increase Real-Time Market⁵ Incremental Energy Bids for Energy that was already scheduled in the Day-Ahead Market ("Increasing Bids in Real Time" or "IBRT"). The September 29 Orders directed the NYISO to make substantive changes to its proposed RLS and IBRT tariff revisions. Although the NYISO's e-tariff submission is being made in Docket No. ER10-2062, *et al.*, this filing addresses the NYISO's compliance obligations in both of the identified dockets.

¹ See *New York Independent System Operator, Inc.*, 132 FERC ¶ 61,271 (2010), Docket No. ER10-1977 ("IBRT Order").

² See *New York Independent System Operator, Inc.*, 132 FERC ¶61, 270 (2010), Docket No. ER10-2062 ("RLS Order").

³ The Mitigation Measures are set forth in Attachment H to the Services Tariff.

⁴ The Market Monitoring Plan is set forth in Attachment O to the Services Tariff.

⁵ Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff or in the MMM.

I. LIST OF DOCUMENTS SUBMITTED

The NYISO submits the following documents:

1. this filing letter;
2. A clean version of the proposed revisions to the NYISO's Services Tariff and
3. A blacklined⁶ version of the proposed revisions to the NYISO's Services Tariff.

II. COPIES OF CORRESPONDENCE

Correspondence concerning this filing should be served on:

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III. BACKGROUND

In July and August of this year, the NYISO submitted several distinct but interdependent filings, which were assigned three distinct docket numbers. The first of these filings was submitted on July 21, 2010 in Docket No. ER10-1866-000. It is not addressed in the instant filing because the Commission did not require any changes to the tariff revisions that the NYISO proposed.⁷ The NYISO's proposed IBRT tariff revisions were submitted to the Commission on July 26, 2010, with minor errata and amendments subsequently submitted in that docket on July 30, 2010, August 10, 2010 and September 29, 2010. The RLS changes

⁶ In order to simplify Commission review of this filing, the NYISO's blackline distinguishes the proposed IBRT compliance revisions from the proposed RLS compliance revisions with yellow highlighting.

⁷ In the July 21, 2010 filing in Docket No. ER10-1866 the NYISO proposed changes to its Bid Production Cost Guarantee Payment program and changes to permit the NYISO to more accurately implement a requirement to its Mitigation Measures that Generator start-up reference levels incorporate costs related to satisfying minimum run time requirements ("Late Day Start"). The Commission issued a letter order on November 3, 2010 accepting these changes without imposing any compliance conditions.

were submitted on July, 30 2010. Due to the related nature of these filings and the fact that they modified many of the same tariff sections, the NYISO submitted a filing in Docket No. ER11-92-000 consolidating all the tariff revisions proposed for Docket Nos. ER10-1866, et al., ER10-1977, et al., and ER10-2062, et al., including all supplemental and errata filings, with priority order designations correctly corresponding to requested effective dates. This filing was made on October 12, 2010 (the “October 12 Filing”). However, the October 12 Filing did not address the NYISO’s outstanding, substantive compliance obligations included in the September 29 Orders. The NYISO addresses its IBRT and RLS compliance obligations in the instant filing.

IV PROPOSED TARIFF REVISIONS

A. Increasing Bids in Real Time

In Docket No. ER10-1977 the NYISO proposed revisions to permit it to implement new IBRT functionality. In the September 29 IBRT Order, the Commission found this new functionality would “increase the ability of generators to manage the risk of real-time cost increases” and “permit bids to more accurately reflect in-day energy production costs,” but that the revisions “lack specificity in their application or leave assessment of penalties up to the NYISO’s discretion.”⁸ In compliance with the September IBRT Order, the tariff revisions proposed below remove all discretion with regard to the NYISO’s application of penalties. In addition, the NYISO proposes to include the identified penalties on its “traffic ticket” list of Market Violations that the Market Monitoring Unit is not required to report to the Commission’s Office of Enforcement.⁹

1. Mitigation Measures Sections 23.4.7.2, 23.4.3.3.4 and 23.4.7.3.1

The Commission found the NYISO’s proposed Section 23.4.7.2 to be “unjust and unreasonable” because it does not “indicate what information or criteria the NYISO will rely upon to determine whether a Market Party’s behavior is ‘consistent with competitive behavior.’”¹⁰ To address the Commission’s concern, the NYISO proposes non-discretionary criteria to determine when both a penalty and mitigation will be imposed. If the real-time Incremental Energy Bid submitted for Energy that was already scheduled in the Day-Ahead Market exceeds the reference level plus the conduct threshold specified in Section 23.4.7.2 of the Mitigation Measures, and the virtual market penalty calculation formula contained in Section 23.4.3.3.4 of the Mitigation Measures results in a penalty in excess of \$1000, then both the mitigation measure specified in Section 23.4.7.3.1 of the Mitigation Measures and

⁸ See IBRT Order ¶ 22.

⁹ See Market Administration and Control Area Service’s Tariff, § 30.4.5.3.2. In order to be considered a “traffic ticket” type offense the Commission has specified that “(i) the activity must be expressly set forth in the tariff, (ii) the activity must involve objectively identifiable behavior, and (iii) the activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission” (See RLS Order ¶ 22, n.8)

¹⁰ See IBRT Order ¶ 24.

the penalty specified in Section 23.4.3.3.4 of the Mitigation Measures will be imposed. The NYISO has deleted the language that allowed it to decide not to apply a penalty when a Market Party is able to show that the real-time Incremental Energy Bid(s) submitted was consistent with competitive behavior. The NYISO also deleted the phrase “which may be imposed” to eliminate the discretion of the NYISO as to whether to apply the penalty or not.

2. Market Monitoring Plan Section 30.4.5.3.2 and 30.4.6.2.9

The proposed revisions to Sections 23.4.7.2, 23.4.3.3.4 and 23.4.7.3.1 that are described above give Market Parties notice of the “objectively identifiable behavior” that will require the NYISO to impose penalties in accordance with Section 23.4.3.3.4, and mitigation in accordance with Section 23.4.7.3.1. By using entirely objective criteria and eliminating the discretion associated with applying the penalty, the NYISO submits that its proposed virtual market penalty meets the requirements to be considered a “traffic ticket offense” that the NYISO’s Market Monitoring Unit is not required to refer to the Commission’s Office of Enforcement as a Market Violation. The NYISO proposes to add virtual market penalties assessed under subsection Section 23.4.3.3.4 of its Mitigation Measures to the list of “traffic ticket” offenses listed in Section 30.4.5.3.2 of the Market Monitoring Plan.

In addition, the NYISO proposes to eliminate the changes made to Section 30.4.6.2.9 of the Market Monitoring Plan because the NYISO has deleted the proposed responsibility of the Market Monitoring Unit (“MMU”) to review and comment on whether it considered a Market Party’s behavior to be “consistent with competitive behavior.”

3. Mitigation Measures Sections 23.4.7.3.1, 23.4.7.3.1.1 through 23.4.7.3.1.4, and Section 23.4.7.3.2

In Section 23.4.7.3.1 of the Mitigation Measures, the NYISO proposes to clarify that if the objective conditions of Section 23.4.7.2 exist, then the NYISO shall revoke the ability of a Generator to use the IBRT functionality for a period of time. As instructed by the Commission, the NYISO proposes to delete an exception for a Market Party to demonstrate that its real time Incremental Energy Bid was consistent with competitive behavior.¹¹ The NYISO also proposes to add three subsections to Section 23.4.7.3.1 specifying non-discretionary criteria that will be used to determine the duration of the mitigation that is imposed. Proposed new subsection 23.4.7.3.1.1 provides that the first time IBRT-related mitigation is applied to a Generator, the duration of mitigation is 90 days, commencing two days after the NYISO gives the Market Party notice of its decision to mitigate. Proposed Subsection 23.4.7.3.1.2 specifies that any subsequent instances of mitigation will last for 180 days. Subsection 23.4.7.3.1.3 allows for a Generator’s history of IBRT-related mitigation to be reset after one year without being IBRT-mitigated (after one year of “good behavior”).

Because the IBRT mitigation measure is necessarily imposed on a Generator, not on a Market Party, proposed new subsection 23.4.7.3.1.4 provides that in the event of a transfer, sale, assignment or grant of the Generator bidding rights, the acquiring/new Market Party

¹¹ See IBRT Order ¶ 24, 26.

must be informed of any applicable mitigation and the duration of such mitigation. This provision will ensure that entities that acquire the right to submit offers for a mitigated Generator are aware that the Generator is subject to IBRT mitigation so that they bid appropriately.

Finally, as directed by the Commission, in Paragraph 24 of the IBRT Order, the NYISO has deleted Section 23.4.7.3.2 of the Mitigation Measures because it repeats language that is already included in Section 23.4.7.2.

4. Market Monitoring Plan Sections 30.4.6.2.7

In paragraph 25 of the IBRT Order the Commission directed the NYISO to make changes to Section 30.4.6.2.7 of the Market Monitoring Plan to remove discretion. Consistent with the NYISO's proposed changes to Section 23.4.7.2 of the Mitigation Measures that are described above, the NYISO proposes to eliminate all need for discretionary review by the NYISO and/or by its MMU for applying IBRT-related penalties and mitigation. For this reason the proposed section of the Market Monitoring Plan is no longer necessary and the NYISO proposes to delete it entirely. This section has been renumbered, therefore the deleted section is actually Section 30.4.6.2.9 of the Market Monitoring Plan. The NYISO submits that this change addresses the Commission's directive.

B. Reference Level Software

The NYISO filed in Docket No. ER10-2062, et al., changes to implement a new RLS functionality to enable Market Parties to submit fuel price and fuel type information for Generators for the NYISO to use in the development of a Generator's reference levels. In the September 29 RLS Order, the Commission accepted the NYISO's filing, finding it "provide[d] increased accuracy in the development of reference levels," but ordered the NYISO to submit a compliance filing complying with certain conditions.¹² The RLS changes the NYISO is proposing to address the Commission's requirements are identified below. Because the proposed RLS compliance changes affect some of the same set of tariff sheets as the IBRT compliance changes, the tariff changes related to compliance with the RLS Order appear in highlighted text.

1. Mitigation Measures Sections 23.3.1.4.7.8 and 23.2.1.4.7.8.1 through 23.2.1.4.7.8.6, and Market Monitoring Plan Section 30.4.6.2.3

In paragraphs 18-21 of the RLS Order the Commission directed the NYISO to modify Section 23.3.1.4.7.8 and its mirror Market Monitoring Plan provision, Section 30.4.6.2.3, to specify the criteria or information that the NYISO will use to determine when it will cease using Market Party submitted fuel type and fuel price information in the calculation of reference levels, and to provide criteria for specifying the duration of mitigation that the NYISO will apply. To comply with this directive, the NYISO proposes to remove discretion

¹² See RLS Order ¶ 17.

from the process by mandating both the application of, and the duration of, mitigation when defined criteria/thresholds are met.

The NYISO proposes to modify Section 23.3.1.4.7.8 of the Mitigation Measures to eliminate the NYISO's discretion in applying mitigation by changing a "may" to a "shall," and deleting the phrase "taken as a whole," giving Market Parties clear notice of when this type of mitigation will apply. Further, the NYISO proposes to add subsections 23.3.1.4.7.8.1 through 23.3.1.4.7.8.6 to specifically identify the duration of the mitigation that will be applied and to provide a specific definition of what constitutes sufficient "bias" to take away a Market Party's ability to use this functionality. These rules provide that the first time the NYISO ceases to use the fuel type and fuel price information the NYISO will suspend the ability for that Generator to submit such information for a period of 60 days. This 60-day mitigation period begins two days after written notice of the mitigation is provided to the Generator. For the second and any subsequent violations, the NYISO will apply the mitigation for 180 days; provided however that if the Generator is not mitigated for a period of one year or more (exhibits good behavior), the mitigation history will reset and the Generator will only be subject to mitigation for a 60-day period for its next infraction.

Because the RLS mitigation measure is necessarily imposed on a Generator, not on a Market Party, proposed new subsection 23.3.1.4.7.8.4 provides that in the event of a transfer, sale, assignment or grant of the Generator bidding rights, the acquiring/new Market Party must be informed of any applicable RLS mitigation and the duration of such mitigation. This provision will ensure that entities that acquire the right to submit offers for a mitigated Generator are aware that the Generator is subject to RLS mitigation so that they bid appropriately.

Proposed new subsection 23.3.1.4.7.8.5 sets forth objective criteria for determining when a Market Party has submitted inaccurate fuel type information that is biased in the Market Party's favor. The proposal incorporates an objective 10% increase in fuel price threshold that is similar to the conduct and impact thresholds that the NYISO uses elsewhere in its Mitigation Measures. Proposed new subsection 23.3.1.4.7.8.6 is similar to subsection 23.3.1.4.7.8.5, but it sets forth the standard for determining when there is bias in the fuel price information that a Market Party submits.

2. Mitigation Measures Section 23.4.3.3.3 and Market Monitoring Plan Section 30.4.6.2.8

The NYISO proposes several compliance changes to Section 23.4.3.3.3 of the Mitigation Measures. In the RLS Order, the Commission directed the NYISO to: (1) insert criteria or information to define what is "consistent with competitive behavior;"¹³ (2) insert criteria to determine when a penalty under \$10,000 will be applied;¹⁴ (3) identify the specific facts and circumstances that are relevant in determining the multiplier to use when calculating

¹³ See RLS Order ¶ 22.

¹⁴ See *id.*

a penalty, or eliminate the multiplier;¹⁵ and (4) add subsections 23.4.3.3.3 and 23.4.3.3.4 to the list of “traffic ticket” type penalties identified in Section 30.4.5.3.2 of the Market Monitoring Plan.¹⁶

To address these concerns, the NYISO proposes the following changes to Section 23.4.3.3.3:

(i) the Market Party shows, to the satisfaction of the ISO, with review and comment by the Market Monitoring Unit, that its actions were consistent with competitive conduct (in which case no penalty is appropriate), that the information was submitted in compliance with the requirements of Section 4.1.9 of the ISO Services Tariff... or (ii) the total penalty calculated for a particular Day-Ahead or Real-Time Market day is less than \$105,000, (in which case the ISO may elect to will not apply a penalty calculated in the manner specified below).

First, the NYISO proposes to remove the “consistent with competitive behavior” exception. Second, adding a specific reference to Section 4.1.9 of the Service’s Tariff, which sets forth the rules associated with Incremental Cost Recovery for units responding to Local Reliability Rules I-R3 and I-R5, Market Parties have notice of the exact criteria they must meet to avoid a penalty. The NYISO also proposes to remove discretion by decreasing the threshold under which no penalty will apply from \$10,000 to \$5,000 and requiring the NYISO to apply any calculated penalty in excess of the \$5,000 threshold amount. Finally, the NYISO proposes to remove its proposed changes to Section 30.4.6.2.8 of the Market Monitoring Plan because it has deleted the proposed portion of the Market Mitigation Measures that assigned to the Market Monitoring Unit responsibility to review and comment on whether a Market Party’s RLS fuel price and fuel type submissions are consistent with competitive conduct.

In Sections 23.4.3.3.3 and 23.4.3.3.4, which contain the Day-Ahead and Real-Time RLS Penalty Calculations respectively, the NYISO proposes two parallel changes. First, consistent with the Commission’s instructions and its proposed revisions to Section 23.4.3.3.3, the NYISO proposes to eliminate the phrase “and the Market Party is not able to show that its submission of inaccurate fuel price information was consistent with competitive conduct.” By removing this language, Market Parties are provided with objective measures of what is acceptable behavior. Second, the NYISO proposes to modify the multipliers that are applied to a penalty to eliminate consideration of the “facts and circumstances” presented by the Market Party. Instead, the NYISO proposes two objective rules. A multiplier of 1.0 will be used if the Market Party has not received a penalty for inaccurate fuel price or fuel type information within the last six months. In all other cases a multiplier of 1.5 multiplier will be used. These provisions on multipliers now specify an objectively determinable method for identifying the multiplier applicable to a particular penalty.

3. Market Monitoring Plan Section 30.4.5.3.2

¹⁵ See RLS Order ¶ 23.

¹⁶ See RLS Order ¶ 25.

Finally, consistent with the Commission's instructions the NYISO proposes to add references to the penalties applied under both Section 23.4.3.3.3 and Section 23.4.3.3.4 to the list of "traffic ticket" type Market Violations specified in Section 30.4.5.3.2 of the Market Monitoring Plan, as subsections 30.4.5.3.2.6 and 30.4.5.3.2.7 respectively. With the proposed modifications, the penalties in these subsections now meet the criteria for "traffic ticket" Market Violations that the Market Monitoring Unit is not required to report to the Commission's Office of Enforcement.¹⁷

C. Priority Order Designations

In both the RLS Order and the IBRT Order the Commission directed the NYISO to "refile unique, chronologically correct implementation priority designations for all those tariff sections that had the same proposed effective date and implementation priority designations that were duplicative of those filed in [the three dockets]."¹⁸ The NYISO submitted accurately designated tariff sheets in Docket No. ER11-92-000 on October 12, 2010. The Commission accepted these changes in an order issued pursuant to delegated authority on November 3, 2010. The NYISO also submits with this filing appropriate effective priority order designations, which will indicate that the sections submitted in the instant filing take chronological priority over those filed on October 12.

V. EFFECTIVE DATE

The NYISO respectfully requests that the tariff revisions proposed in this filing be permitted to become effective on October 21, 2010, consistent with the Commissions November 3, 2010 Order in Docket No. ER11-92-000.

VI. SERVICE LIST

The NYISO will send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the electric utility regulatory agency of New Jersey. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the proposed tariff changes identified in the Attachments hereto, with an effective date of October 21, 2010.

¹⁷ See note 9, *supra*.

¹⁸ See IBRT Order ¶ 27; RLS Order ¶ 27.

Kimberly D. Bose, Secretary
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Respectfully submitted,

/s/ Kristin A. Bluvas

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New York Independent System Operator, Inc.