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October 14, 2011

By Electronic Delivery

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 Proposed Tariff Revisions Regarding the Allocation of Its Operating Costs Among Market Participants; Docket No. ____________

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,[1] the New York Independent System Operator, Inc. ("NYISO") hereby submits proposed revisions to Rate Schedule 1 of its Open Access Transmission Tariff ("OATT"). The NYISO proposes to revise Section 6.1.2 of Rate Schedule 1 to change the allocation among NYISO market participants of the NYISO's budgeted annual operating costs and Commission-assessed regulatory fees ("Operating Costs") and to maintain this new allocation for a period of at least five years.[2] As described below, the proposed allocation is a reasonable and equitable distribution of the NYISO's Operating Costs among market participants.

Section 6.1.2 of Rate Schedule 1 of the OATT establishes the method by which the NYISO allocates its Operating Costs among market participants. The NYISO currently recovers 80% of its Operating Costs from market participants that physically withdraw energy in New York ("Loads") and 20% from market participants that physically supply energy in New York ("Suppliers"). The NYISO then rebates back to Loads and Suppliers on an 80/20 basis a portion of its Operating Costs that the NYISO separately recovers from market participants that engage in virtual transactions, that purchase Transmission Congestion Contracts ("TCCs"), that are

[1] 16 U.S.C. § 824d.
[2] Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article 1 of the OATT and Article 2 of the Market Administration and Control Area Services Tariff ("Services Tariff").

Special Case Resources ("SCRs"),[3] or that participate in the Emergency Demand Response Program ("EDRP").[4] With this rebate amount included, the current cost allocation among market participants is approximately 75% to Loads, 19% to Suppliers, and 6% to market participants that engage in virtual transactions, purchase TCCs, are SCRs, or are EDRP participants.

In July 2010, a majority of NYISO stakeholders voted pursuant to a specific stakeholder process set forth in Section 6.1.2.3 of Rate Schedule 1 to undertake a new, independent study of the NYISO's allocation of its Operating Costs. The NYISO worked with its stakeholders to identify the scope of the study and selected Black & Veatch ("B&V") as a consultant to perform the study. B&V reviewed the study parameters and interim results with stakeholders and issued a final study report in July 2011 ("B&V Study"). The study process is described in detail in Section IV.B of this filing. Based on the B&V Study results and extensive discussions with stakeholders, the NYISO proposes to revise Section 6.1.2 of Rate Schedule 1 to replace the current allocation by which Loads pay 80% and Suppliers pay 20% of the Operating Costs with a new allocation by which Loads pay 72% and Suppliers pay 28%.[5] In addition, the NYISO proposes to update the rates that are used to calculate the portion of the Operating Costs paid by market participants engaging in non-physical transactions, SCRs, and EDRP participants. The NYISO proposes that the new cost allocation be maintained for a period of at least five years.

The proposed tariff revisions were approved by the Management Committee with an affirmative vote of 67.03% on July 27, 2011, and by the NYISO Board of Directors ("Board") on September 21, 2011.

I. List of Documents Submitted

The NYISO submits the following documents:

1. This filing letter;

2. The Executive Summary of the Black & Veatch Study ("Attachment I");

3. The NYISO Board's Decision Regarding an Appeal of the Management Committee Vote ("Attachment II");

[3] Special Case Resources ("SCR") are "Demand Side Resources capable of being interrupted upon demand, and Local Generators, rated 100 kW or higher, that are not visible to the ISO's Market Information System and that are subject to special rules, set forth in Section 5.12.11.1 of this ISO Services Tariff and related ISO Procedures, in order to facilitate their participation in the Installed Capacity market as Installed Capacity Suppliers." Services Tariff, Article 2.

[4] The NYISO Emergency Demand Response Program ("EDRP") is "a program pursuant to which the ISO makes payments to Curtailment Service Providers that voluntarily take effective steps in real time, pursuant to ISO procedures, to reduce NYCA demand in Emergency conditions." Services Tariff, Article 2.

[5] The current 80/20 allocation and proposed 72/28 allocation discussed in this filing describe the allocation of the Operating Costs to Loads and Suppliers prior to the NYISO's distribution of any rebate amount recovered from market participants that engage in virtual transactions, purchase TCCs, are SCRs, or are EDRP participants.

4. A clean version of the proposed revisions to the OATT ("Attachment III"); and

5. A blacklined version of the proposed revisions to the OATT ("Attachment IV").

II. Copies of Correspondence

Copies of correspondence concerning this filing should be served on:

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III. 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 New Jersey Board of Public Utilities. In addition, the complete public version of this filing will be posted on the NYISO's website at www.nyiso.com.

IV. Description of Proposed Revisions

A. Development of the NYISO's Current Allocation of its Operating Costs Among Market Participants

[6] The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2008) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, VA.

When it began operation in 1999, the NYISO recovered its Operating Costs entirely from Load. On June 1, 2002, the NYISO adjusted this allocation to recover 85% of its Operating Costs from Load and 15% from Suppliers.[7] When it accepted this re-allocation, the Commission encouraged the NYISO to study whether the 85/15 allocation was appropriate for the long term.[8] Shortly thereafter, the NYISO contracted with a consultant, R.J. Rudden Associates, Inc. ("Rudden"), to examine the appropriateness of the 85/15 allocation. Following the completion of the Rudden study, the NYISO and its stakeholders negotiated a new allocation of the Operating Costs that took effect on January 1, 2005, assigning 80% to Load and 20% to Suppliers.[9] Section 6.1.2.2 of Rate Schedule 1 of the OATT establishes this 80/20 allocation.

The 80/20 allocation was initially set for a term of five years - through December 31, 2009.[10] Pursuant to Rate Schedule 1 of the OATT, the NYISO was required to review the 80/20 allocation during the fourth quarter of 2008 and to determine whether significant market changes had occurred since 2005 to merit a review of the allocation.[11] In December 2008, the NYISO concluded that no significant market changes had occurred since 2005 to require a review of the 80/20 allocation at that time.[12] The NYISO then proposed on April 8, 2009, and the Commission accepted on May 15, 2009, a two year extension of the 80/20 allocation - through December 31, 2011 - and the establishment of a specific stakeholder process to determine when to review and, if warranted by the review, to modify the allocation going forward.[13] The stakeholder process expressly removed the requirement that the NYISO identify a significant market change as a prerequisite for reviewing or modifying the existing allocation of the Operating Costs. Instead, the stakeholder process - as set forth in Section 6.1.2.3 of Rate Schedule 1 of the OATT - requires that the Management Committee vote in the third calendar quarter of 2010 on whether a new study should be conducted. If changes to the allocation are warranted by the new study, the NYISO is required to seek FERC acceptance of a revised allocation for a January 1, 2012, effective date. An affirmative vote of at least 58% is required to initiate a study. As described below, 67.75% of the Management Committee voted on July 21, 2010 to undertake a new study.

[7] *See New York Independent System Operator, Inc.*, 100 FERC ¶ 61,315 (2002) (accepting the 85/15 allocation with a June 1, 2002, effective date).
[8] *Id.* at P. 13.
[9] *See New York Independent System Operator, Inc.*, 109 FERC ¶ 61,161 (2004) (accepting the 80/20 allocation with a January 1, 2005, effective date).
[10] *See id.*
[11] The NYISO described the review requirement in its 2004 filing proposing the 80/20 allocation. *New York Independent System Operator Inc.*, Filing of Tariff Revisions to Modify Recovery of Certain Charges Assessed under Rate Schedule 1 of its Open-Access Transmission Tariff and Market Administration and Control Area Services Tariff, Docket No. ER04-1229-000, at p. 6 (September 15, 2004).
[12] *See* the NYISO's "Rate Schedule 1 Allocation" presentation at the December 3, 2008, Management Committee meeting at: http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2008-12-03/agenda_04_Pres_re_RS1_unbundling_v2.pdf.
[13] *See New York Independent System Operator, Inc.,* Proposed Tariff Revisions Regarding the Recovery of Certain Charges Assessed under the Appropriate Schedules of Its Open-Access Transmission Tariff and Its Market Administration and Control Area Services Tariff, Docket No. ER09-971-000 (April 8, 2009); *see also* Commission letter order, Docket No. ER09-971-000 (May 15, 2009).

In addition to recovering the Operating Costs from Load and Suppliers, the NYISO began on January 1, 2010, to recover a portion of the Operating Costs from market participants that engage in virtual transactions, purchase TCCs, are SCRs, or participate in the EDRP.[14] Specifically, pursuant to Section 6.1.2.4.1 of Rate Schedule 1, a market participant that engages in virtual transactions pays the product of a set rate and its total cleared virtual transactions each billing period. Similarly, pursuant to Section 6.1.2.4.2 of Rate Schedule 1, a market participant that purchases TCCs pays the product of a set rate and the number of TCCs it holds each billing period. The initial rates used for these calculations were set for calendar year 2010 through discussions among the NYISO and its stakeholders, using similar rates applied by PJM Interconnection and the Midwest Independent System Operator as benchmarks. As set forth in Section 6.1.2.4.4 of Rate Schedule 1, these rates are re-set each July for the following year based on that year's projected annual revenue requirement for virtual transactions and TCCs and market activity, adjusted for under-or-over collection in the prior year. In addition, pursuant to Section 6.1.2.4.3 of Rate Schedule 1, a market participant that is an SCR or an EDRP participant pays a charge for Operating Costs that is the product of its Load reduction and the rate applied to Suppliers in connection with physical transactions, which is calculated using the current 20% allocation to Suppliers.[15]

Pursuant to Section 6.1.2.5 of Rate Schedule 1, the NYISO rebates all of the revenues that it collects through the non-physical, SCR, and EDRP charges to Loads and Suppliers each billing period on an 80/20 basis.[16] With this rebate amount included, the current cost allocation of the NYISO's Operating Costs among market participants is approximately 75% to Loads, 19% to Suppliers, and 6% to market participants that engage in virtual transactions, purchase TCCs, are SCRs, or are EDRP participants.

B. Performance of a New, Independent Cost Allocation Study

On July 21, 2010, 67.75% of the Management Committee voted pursuant to Section 6.1.2.3 of Rate Schedule 1 to undertake a new, independent study of the allocation of the NYISO's Operating Costs. Pursuant to the requirements in Section 6.1.2.3, the NYISO discussed the scope of the study with stakeholders at the August 2010 and September 2010

[14] *See New York Independent System Operator, Inc.*, Proposed Tariff Revisions to Allocate a Portion of Rate Schedule 1 Charges to Non-Physical Market Transactions, to Special Case Resources, and to Emergency Demand Response Program Participants and Request for Shortened Comment Period and for Expedited Action, Docket No. ER10-95-000 (October 23, 2009); *see also* Commission letter order, Docket No. ER10-95-000 (December 12, 2009).

[15] The rate is calculated by multiplying 20% by the NYISO's annual budged costs in the current calendar year, and dividing this amount by the estimated Withdrawal Billing Units for all Transmission Customers for the current calendar year.

[16] Because the amount that the NYISO recovers from non-physicals, SCRs, and EDRPs changes from year to year due to changes in market activity, the NYISO initially recovers 100% of its Operating Costs from Loads (80%) and Suppliers (20%) to ensure the full recovery of its Operating Costs. The NYISO then rebates to Loads and Suppliers the amounts that it recovers from non-physicals, SCRs, and EDRPs.

Billing & Priorities Working Group ("BPWG") meetings. The NYISO then undertook an RFP process and selected B&V as the consultant to perform the study.

Between January and June 2011, B&V met with the BPWG to discuss study parameters and interim study results. As part of this process, B&V: (i) created a survey for market participants to identify priorities, (ii) conducted mini-sector meetings to obtain additional feedback and identify concerns, (iii) reviewed NYISO cost data for the 2007-2010 historical periods, as well as for the 2011 budget year, and (iv) conducted interviews with members of NYISO management regarding the NYISO's various services and cost centers. B&V also consulted with representatives of other RTO/ISOs, reviewed other RTO/ISO tariffs and regulatory filings, and provided stakeholders with a summary of the respective RTO/ISO rate recovery mechanisms and methodologies.

The B&V Study was completed in July 2011. The B&V Study identified the assorted costs included in the Operating Costs and developed two allocation scenarios that established an upper and lower bound of a reasonable allocation. Specifically, B&V directly assigned specific Operating Costs to Loads and Suppliers, where possible, and then used two different methodologies for assigning those costs associated with "shared services" that are attributable to both Loads and Suppliers. The difference in the allocation of the "shared services" costs set the upper and lower bounds of a reasonable cost allocation. The B&V Study recommended that the NYISO replace the current 80/20 allocation between Loads and Suppliers with a new allocation at the midpoint of these upper and lower bounds. Under this new allocation, Load would be responsible for 72% of the Operating Costs, and Suppliers would be responsible for 28%. When the charges associated with non-physical transactions, SCRs, and EDRP participants are included, the allocation would be approximately 67% for Load, 27% for Suppliers, and 6% for market participants engaging in non-physical transactions, SCRs, and EDRP participants. The Executive Summary of the B&V Study describing its findings is enclosed as Attachment I to this submission.

C. Proposed Allocation of Operating Costs Among Market Participants

Based on the results of the independent B&V Study and extensive discussions with stakeholders, the NYISO proposes to replace the 80/20 allocation with a new allocation of 72/28. Given the difficulty in precisely attributing costs associated with shared services to a particular category of market participants, B&V's analysis necessarily involved a degree of professional judgment. However, the NYISO believes that B&V exercised its judgment in a rational and equitable manner and that its proposed 72/28 allocation constitutes a reasonable and equitable allocation of the Operating Costs between Loads and Suppliers. In addition, the 72/28 allocation falls well within the range of cost allocations used in other RTO/ISO regions. While the 28% assigned to Suppliers is somewhat higher that the percentage used by certain RTO/ISOs, it is lower than the 33% assigned to Suppliers under the California Independent System Operator's recently revised cost allocation.

The NYISO also proposes to update the rates used to calculate the portion of its Operating Costs charged to a market participant that engages in non-physical transactions (i.e., virtual transactions or TCCs) in accordance with the findings in the B&V Study. As discussed above, the initial 2010 rates for calculating the Operating Costs charged to a market participant that engages in non-physical transactions were determined by the NYISO and stakeholders based on the best data then available to them, which were the rates applied for similar services by PJM Interconnection and the Midwest Independent System Operator. The rates for each year following 2010 are derived from these initial rates. The B&V Study provided an independent, NYISO-specific determination of the Operating Costs attributable to market participants engaging in non-physical transactions. For this reason, the NYISO proposes to apply updated rates for 2012 based on the data determined by the B&V Study.

In addition, the NYISO proposes to adjust the rate used to calculate the Operating Costs charged to market participants that are SCRs or EDRP participants. As described above, this rate corresponds to the rate applied to Suppliers, and will be similarly revised to replace the current 20% allocation to Suppliers with the proposed 28% allocation.

The NYISO proposes to maintain the new cost allocation for a period of at least five years. A set five year period will provide NYISO market participants with a level of certainty regarding their responsibility for the Operating Costs. Moreover, the Commission has previously accepted a five year term as it provides budget stability.[17] The NYISO proposes to continue to use the existing stakeholder process in Section 6.1.2.3 of Rate Schedule 1, with updated dates, to determine when to review and, if necessary, modify the 72/28 allocation going forward.

D. Approval of Proposed Cost Allocation through NYISO Stakeholder Process

On July 27, 2011, the Management Committee considered the NYISO's proposed tariff revisions. The Management Committee approved the proposals by an affirmative vote of 67.03%. One stakeholder - the Independent Power Producers of New York ("IPPNY") - appealed the Management Committee decision to the Board. IPPNY argued that the B&V Study contained significant deficiencies and that the resulting cost allocation would adversely impact Suppliers. After careful consideration, the Board denied IPPNY's appeal, finding that the proposed costs allocation is a reasonable and equitable allocation of the Operating Costs among NYISO market participants, which will result in relatively modest additional costs to Suppliers and which falls well within the range of other RTO/ISOs' cost allocations. The Board's Decision is enclosed as Attachment II to this submission. On September 21, 2011, the Board approved the NYISO's proposed tariff revisions.

V. <u>Proposed Tariff Revisions</u>

A. Proposed 72/28 Allocation of Operating Costs

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[17] *See New York Independent System Operator, Inc.*, 109 FERC ¶ 61,161, at P. 20 (2004).

The NYISO proposes to revise the formula in Section 6.1.2.2 of Rate Schedule 1 of the OATT for calculating a Load or Supplier's payment each billing period for the Operating Costs to replace ".2" and ".8" in the formula with ".28" and ".72." In addition, the NYISO proposes to revise the formula in Section 6.1.2.5 of Rate Schedule 1 of the OATT for rebating to a Load or Supplier the Operating Costs recovered from market participants engaging in non-physical transactions, SCRs, and EDRP participants to replace ".2" and ".8" in the formula with ".28" and ".72."

B. Updated Stakeholder Process for Review and Modification of Allocation of Operating Costs

Section 6.1.2.3 of Rate Schedule 1 of the OATT establishes the process for stakeholders to vote to review and, if warranted by the review, to modify the current 80/20 allocation. The NYISO proposes to revise Section 6.1.2.3 to continue to apply the stakeholder process for the review and modification of the cost allocation of the NYISO's Operating Costs going forward. Specifically, the NYISO proposes to replace the references in Section 6.1.2.3 to the 80/20 allocation with references to the 72/28 allocation. In addition, the NYISO proposes to update the dates in Section 6.1.2.3. Under the revised provisions, the 72/28 allocation will be maintained for a period of at least five years - through at least December 31, 2016. The Management Committee will hold a vote in the third quarter of 2015 to determine whether a study should be undertaken to review the 72/28 allocation. If the Management Committee votes by 58% to undertake a new study, a study will be performed in late 2015 through 2016, with the NYISO requesting that FERC accept any modifications to the 72/28 allocation to become effective on January 1, 2017. If the Management Committee votes against undertaking a study, the Management Committee will hold a vote each year until it requests that a study be performed. However, in subsequent years, a vote of 58% of the Management Committee will be required to decline to undertake a study.

C. Proposed Modifications to the Allocation of Operating Costs to Market Participants Engaging in Non-Physical Transactions, SCRs, and EDRP Participants

Sections 6.1.2.4.1 and 6.1.2.4.2 of Rate Schedule 1 of the OATT contain the formulas for calculating the portion of the NYISO's Operating Costs charged to a market participant that engages in virtual transactions or purchases TCCs. As discussed above, the NYISO proposes to set the rates in these formulas for calendar year 2012 based on the recent determinations made in the B&V Study. Specifically, the NYISO proposes to revise the rate and annual revenue requirement data set forth in Sections 6.1.2.4.1 and 6.1.2.4.2. The NYISO proposes to specify that for 2012 the rate applied to a market participant engaging in virtual transactions will be $0.0871 per cleared virtual transaction in the billing period, based on a projected annual revenue requirement in 2012 of $2.6 million. In addition, the NYISO proposes to specify that for 2012 the rate applied to a market participant purchasing TCCs will be $0.0372 for each TCC held during the billing period, based on a projected annual revenue requirement in 2012 of $4.9 million.

These proposed rates for calendar year 2012 will replace the currently posted rates for 2012 that the NYISO calculated in July 2011 in accordance with the rate re-set requirements in Section 6.1.2.4.4 of Rate Schedule 1 and that are derived from the initial 2010 rates. The NYISO will start the rate re-set process in Section 6.1.2.4.4, including any over or under collection amounts, anew, using the new 2012 annual revenue requirement amounts proposed in this filing as the starting point for post-2012 rate re-sets.

In addition, Section 6.1.2.4.3 of Rate Schedule 1 of the OATT contains the formula for calculating a SCR or EDRP participant's charge for a portion of the NYISO's Operating Costs. As discussed above, the rate for this formula is the same rate applied in Section 6.1.2.2 to Suppliers in connection with physical transactions, which is being revised from 20% to 28%. For this reason, the NYISO proposes to revise the formula in Section 6.1.2.4.3 to replace ".2" with ".28."

VI. Effective Date

The NYISO respectfully requests a January 1, 2012, effective date for the proposed tariff revisions, so that the proposed cost allocation will take effect on the date set forth in Section 6.1.2.3 of Rate Schedule 1 of the OATT.

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 this filing.

Respectfully submitted,

/s/ Ted J. Murphy
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