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April 6, 2011

**By Electronic Filing**

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

***Re: New York Independent System Operator, Inc., Docket No. ER11- -***

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, the New York Independent System Operator, Inc. ("NYISO") respectfully submits proposed revisions to its Market Monitoring Plan, filed as Attachment O to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").<sup>1</sup>

The proposed amendments (1) address Order 719 requirements relating to the NYISO independent Market Monitoring Unit's ("MMU") disclosure obligations vis-a-vis state public service commissions ("State PUCs"), and (2) establish a framework for the exchange of Protected Information among the NYISO, the MMU, and other ISO's and market monitoring organizations.<sup>2</sup> The proposals outlined here were approved by the NYISO's stakeholders in November and by the NYISO's Board of Directors on December 20, 2010. In addition, as described more fully below, the NYISO has discussed its data-sharing proposal with its neighboring ISO/RTOs and their market monitors. The NYISO requests an effective date sixty days from the date of this filing.

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<sup>1</sup> Capitalized terms not specifically defined herein have the meaning set forth in the Services Tariff or in the NYISO's Market Monitoring Plan.

<sup>2</sup> "Protected Information" is the term used in Attachment O to encompass broad categories of sensitive and confidential information.

**I. Documents Submitted**

1. This filing letter;
2. A clean version of the proposed revisions to Attachment O of the Services Tariff (“Attachment I”); and
3. A blacklined version of the proposed revisions to Attachment O of the Services Tariff (“Attachment II”).

**II. Background to this Filing**

The proposals submitted here arise out of two separate Commission directives. One set of tariff modifications responds to an issue addressed in Order 719; the other relates to concerns raised by the Commission in the context of the multi-party Lake Erie Loop Flow investigation about restrictions on the ability of ISOs and RTOs to share confidential data.

Order 719 includes a requirement that market monitoring organizations respond to “tailored requests” from State PUCs for information about “general market trends and the performance of the markets.”<sup>3</sup> The Commission recognized that a market monitor’s response to such a request might include confidential material.<sup>4</sup> To address that possibility, the Commission wrote:

Where information to be provided raises confidentiality concerns, the information may nonetheless be provided, if appropriate non-disclosure agreements are executed. We direct the RTOs and ISOs to develop confidentiality provisions for their tariffs ... It will be up to each RTO or ISO, together with its stakeholders, to propose the confidentiality provisions they deem most appropriate, and to propose them to the Commission in a tariff filing<sup>5</sup>

In the same order, the Commission further stated that the release of confidential information in response to a state request “is to be subject to the confidentiality provisions in the RTO’s or ISO’s tariff ... RTOs and ISOs are to develop confidentiality provisions that will protect

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<sup>3</sup> Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008), 125 FERC ¶61, 071 (2008). The corresponding tariff provisions are in the NYISO Market Monitoring Plan, Services Tariff, Attachment O, at Section 6.5.5.

<sup>4</sup> The NYISO’s MMU has not to date received any requests from State Commissions that would require the production of Protected Information.

<sup>5</sup> Order 719 at P 448.

commercially sensitive material, but which will be no more restrictive than necessary to protect that information.”<sup>6</sup>

In the context of the Loop Flow investigation, the NYISO and the collaborating ISO/RTOs raised concerns about confidentiality restrictions potentially impeding market monitoring investigations. The Commission directed the NYISO and its neighbors to resolve those concerns, stating “The Commission is concerned by the suggestion that its market monitoring rules may preclude prompt identification and resolution of possible market manipulation ... NYISO should continue to work with its market participants, NERC, and neighboring RTOs to develop potential solutions....”<sup>7</sup>

In its May 15, 2009 filing in compliance with Order 719, the NYISO proposed to undertake a stakeholder process to develop confidentiality rules governing the MMU’s disclosure of commercially sensitive information to State PUCs.<sup>8</sup> The NYISO proposed to combine this effort with the development of procedures to facilitate data-sharing among ISO/RTOs and market monitors.<sup>9</sup> The Commission accepted this proposal in an order issued in November 2009.<sup>10</sup> The present filing submits the tariff changes resulting from the stakeholder discussions pursued by the NYISO staff and Market Participants and from the NYISO’s discussions with its neighboring ISOs and RTOs and their market monitors.

The proposed new language authorizes, but does not require, the MMU to release Protected Information to a State PUC when the State PUC meets two threshold requirements. First, the State PUC must provide written assurances to the MMU of its commitment to, and authority for, keeping the data that it receives from the MMU confidential. Second, the State PUC must certify that it will not use the information for state law enforcement purposes.<sup>11</sup> If the MMU is not willing to release Protected Information, a State PUC may petition the Commission for access to the information, as provided by Order 719,<sup>12</sup> but the MMU is not otherwise obligated to disclose it.

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<sup>6</sup> *Id.* at P 459.

<sup>7</sup> *New York Independent System Operator, Inc.*, Order Accepting Tariff Sheets, Docket No. ER08-1281-000 (August 21, 2008), at P 28; *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,174 at P 28 (2008).

<sup>8</sup> *New York Independent System Operator, Inc.*, Compliance with Order 719, Docket No. ER09-1142-000 (filed May 15, 2009) at 19-20.

<sup>9</sup> *Id.*

<sup>10</sup> *New York Independent System Operator, Inc.*, Order on Compliance Filing, Docket No. ER09-1142-000, 129 FERC ¶ 61, 164 (November 20, 2009).

<sup>11</sup> Order 719 prohibits market monitoring units from providing confidential data to state commissions if the data is to be used in a state enforcement action. Order 719 at P 451.

<sup>12</sup> *Id.* at P 458.

This filing also proposes rules for sharing confidential data with other ISO/RTOs and their market monitoring organizations. The proposed modifications will authorize the NYISO or the MMU to share Protected Information with other ISOs and RTOs and their market monitoring organizations only when the recipient ISO, RTO, or market monitoring organization can show that its tariffs contain adequate protections for the data. Those protections must include enforceable obligations to protect the data from further disclosure and a commitment to notify the NYISO or the MMU of any subpoenas or other legal action by third parties seeking the information. Thus, before the NYISO or the MMU may disclose confidential New York data to another RTO or market monitor, the recipient of the disclosure must first establish these threshold protections in its own tariffs or other governing documents. Alternatively, the parties may enter into a non-disclosure agreement that incorporates the required protective measures.

NYISO representatives have discussed this approach to improved data-sharing with representatives of ISO-NE, PJM, MISO, and IESO and their respective market monitoring organizations. The ISOs and RTOs understand that their tariffs may need to be modified to facilitate data exchanges. All of the neighboring organizations have committed to reviewing the NYISO's proposal in the context of their own tariffs and have informed the NYISO that they intend to take up the matter in their own stakeholder processes in the near future.

The NYISO recognizes that the specific language proposed in this filing may not be appropriate for other ISOs and RTOs and their market monitoring organizations. Rather, each ISO/RTO must evaluate the NYISO's proposal in light of its own tariffs. The NYISO does not propose that the Commission direct any of the other jurisdictional ISOs or RTOs to make any specific modification to their tariffs or other Commission-accepted documents in response to this proposal. Nor is anything the NYISO proposes here intended to affect the scope of those other organizations' tariff authority. For example, while the NYISO's proposal contemplates that the NYISO or its MMU may exchange data in the context of a joint investigation with a neighboring market monitor, the parties' existing tariff authority shall control the scope and conduct of any such investigation.<sup>13</sup>

The proposed tariff filing includes other minor changes. The majority of these additional changes establish procedures to protect any confidential information that the NYISO or the MMU may receive from other ISOs and RTOs, under the reciprocal data-sharing framework that the NYISO proposes. Another minor change explicitly authorizes the NYISO and the MMU to share confidential data with each other, as necessary to carry out their tariff duties.

### **III. Description of Tariff Changes**

The NYISO's proposals modify several sections of the Market Monitoring Plan, as described below.

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<sup>13</sup> Order 719 defines the scope of market monitors' authority to conduct investigations. See Order 719 at P 354 (requiring a market monitoring unit to notify Commission staff of suspected tariff violations), and 18 C.F.R. 35.28(g)(3)(iv) (restricting a market monitoring unit's investigative activities following referral to the Commission).

Section 30.2.14, “Protected Information” – The NYISO has added language clarifying that a party’s designation of information as protected must be consistent with the NYISO’s tariffs and the Market Monitoring Plan to prevent abuse of the “Protected” designation.

Section 30.6.4, “Confidentiality” -- The NYISO proposes changes that are necessary to support the other modifications submitted with this filing. The new language creates a continuing obligation to preserve the confidentiality of Protected Information. It recognizes that exceptions to confidentiality protections may be authorized by the terms of the NYISO’s tariffs and the Marketing Monitoring Plan. It directs the NYISO and the MMU to provide notice to the source of information provided under section 30.6.6 upon receipt of a subpoena or other compulsory process seeking the same information. Finally, the proposed language clarifies that nothing in Attachment O alters any statutory authorities to compel disclosure that may apply to the NYISO, its MMU, or any other ISO, RTO, or market monitoring entity.

Section 30.6.5.1 - The NYISO proposes to clarify that the NYISO and its MMU are authorized to share Protected Information with each other.

Section 30.6.5.5.1 - The changes proposed in this section clarify the MMU’s obligations with respect to requests from State PUCs. The language authorizes the MMU to disclose Protected Information in response to a State PUC request with the consent of the party to which the information pertains. Disclosure is also permitted if the State PUC provides sufficient assurances that the information will be protected from any further disclosure and that it will not be used for a state enforcement action. Information gathered from another ISO/RTO or market monitor is not subject to disclosure under this section; in such a case, the MMU shall direct the State PUC to the entity that is the source of the information.

Section 30.6.6 – The new language proposed for this section establishes the rules under which the NYISO and the MMU will be authorized to disclose Protected Information to another ISO/RTO or market monitoring unit. If the Requesting Entity can show that its tariffs or other governing documents provide the protections set forth in Section 30.6.6.1, then disclosure is permitted. Alternatively, a disclosure may be authorized under a non-disclosure agreement that includes the required protections. Data sharing in a joint investigation is also contemplated, so long as the same protective standard is met. Existing language relating to disclosures in this section will be superseded by the proposed amendments and will be deleted from the Plan.

#### **IV. Effective Date and Implementation Plan**

The NYISO requests an effective date sixty days from this filing for the proposed amendments.

**V. Stakeholder Approval**

The proposed changes were presented at multiple Market Participant Working Group meetings in 2010 and were unanimously approved (with abstentions) by the Management Committee on November 17, 2010. The NYISO later presented certain clarifications that were developed as a result of its discussions with its neighboring ISO/RTOs and market monitors to its Market Participants. No objections or concerns were raised by New York stakeholders with regard to these proposed revisions.

**VI. Communications and Correspondence**

All communications and service in this proceeding should be directed to:

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**VII. Service**

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 filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

Honorable Kimberly D. Bose  
April 6, 2011  
Page 7

**VIII. Conclusion**

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept for filing proposed the tariff revisions attached hereto with an effective date of June 5, 2011.

Respectfully submitted,

/s/ Elizabeth A. Grisaru

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