



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20037

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

TED J. MURPHY
DIRECT DIAL: 202 • 955 • 1588
EMAIL: tmurphy@hunton.com

April 30, 2012

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.*, Docket No. Nos. ER11-3949-____ and ER11-3951-____, Compliance with Order Nos. 741 and 741-A

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”), the Commission’s *Order on Rehearing* (“Order No. 741-A”), and Section 35.47(d) of the Commission’s regulations.¹ This compliance filing proposes a number of revisions to the Market Administration and Control Area Services Tariff (“Services Tariff”), Open Access Transmission Tariff (“OATT”), Agreement Between New York Independent System Operator And Transmission Owners (“ISO-TO Agreement”), and Agreement Between The New York Independent System Operator And New York State Reliability Council (“ISO-NYSRC Agreement”) to clarify the NYISO’s role as the single counterparty to Market Participant transactions, establish that the NYISO, as the counterparty, will take title to the products that are the subject of the transactions it administers, and make other clarifications to enhance the NYISO’s protections against financial losses due to the bankruptcy of a Market Participant.²

¹ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh’g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh’g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

² Capitalized terms used but not defined in this filing shall have the meanings given to them in the Services Tariff and OATT.

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 OATT (Attachment I);
3. A blacklined version of the proposed revisions to the OATT (Attachment II);
4. A clean version of the proposed revisions to the Services Tariff (Attachment III);
5. A blacklined version of the proposed revisions to the Services Tariff (Attachment IV);
6. An executed copy of the Amendment to Section 3.04(g) of the ISO-TO Agreement (Attachment V); and
7. An executed copy of the Amendment to Section 3.3 of the ISO-NYSRC Agreement (Attachment VI).

In addition, the NYISO will make a supplemental filing that will include the following documents:

8. A clean version of the proposed revisions to the ISO-TO Agreement (Attachment VII)
9. A blacklined version of the proposed revisions to the ISO-TO Agreement (Attachment VIII);
10. A clean version of the proposed revisions to the ISO-NYSRC Agreement (Attachment IX); and
11. A blacklined version of the proposed revisions to the ISO-NYSRC Agreement (Attachment X).

A supplemental filing is necessary because of technical restrictions imposed by the eTariff system. The NYISO is unable to electronically submit proposed revisions to ISO Related Agreements (*i.e., items 8-11*) at the same time as it electronically submits proposed revisions to the ISO Tariffs. The filing letter for the supplemental filing will be identical to this filing letter.

II. COMMUNICATIONS AND CORRESPONDENCE

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs

*Sara Keegan, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
rstalter@nyiso.com
skeegan@nyiso.com

*Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Ave., N.W.
Washington, D.C. 20037
Tel: (202) 955-1588
Fax: (202) 778-2201
tmurphy@hunton.com

*Kevin W. Jones³
Heather S. Glass
Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 344-7999
kjones@hunton.com
hglass@hunton.com

* Persons designated for service.

III. BACKGROUND

In Order Nos. 741 and 741-A, the Commission directed independent system operators (ISOs) and regional transmission organizations (RTOs) to reform their credit policies by revising their tariffs to: (i) establish billing and settlement periods of no more than seven days; (ii) limit the amount of unsecured credit extended to any one market participant or affiliated group of market participants to \$50 million; (iii) eliminate unsecured credit for financial transmission rights or equivalent markets; (iv) establish minimum participation criteria for market participants; (v) provide examples of when an ISO/RTO may invoke a “material adverse change” clause in requesting additional collateral; (vi) limit to no more than two days the time period permitted for a market participant to meet a collateral call; and (vii) clarify the legal status of the ISO/RTO as the single counterparty to market participant transactions or establish market participant credit requirements based on gross obligations.

The NYISO made a compliance filing proposing tariff revisions with respect to reforms (i)-(vi) on June 30, 2011. The Commission conditionally accepted this filing on September 15,

³ 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.

2011 (the “September 15 Order”).⁴ On April 5, 2012, the NYISO submitted a filing to comply with the Commission’s directives in the September 15 Order. The April 5 filing is pending before the Commission.

The NYISO is making this filing to comply with reform (vii) by clarifying the NYISO’s legal status as the counterparty to Market Participant transactions. In Order No. 741, the Commission expressed concern that the failure of an ISO/RTO to take title to the products that are the subject of the transactions it administers at the time of settlement could result in a bankruptcy court, in the event of a market participant bankruptcy, refusing to allow the ISO/RTO to net amounts owed to a market participant with amounts owed by it, which could lead to a larger loss to the ISO/RTO that must be socialized among all other market participants.⁵ In an effort to avoid such an outcome, the Commission directed each ISO/RTO to establish itself as the central counterparty to transactions with market participants, require market participants to provide a security interest in their transactions, or establish credit requirements for market participants based on their gross obligations.⁶

IV. DESCRIPTION OF PROPOSED COMPLIANCE TARIFF REVISIONS

The NYISO’s current tariff provisions establish that the NYISO acts as a central counterparty in settling Market Participant transactions, although it does so in its capacity as the administrator of the market and it neither holds title to the funds in the account used to settle transactions nor takes title to the products purchased and sold in the NYISO-administered markets. The tariff revisions proposed in this filing, as described in detail below, clarify the NYISO’s role as the single counterparty to Market Participant transactions, establish that the NYISO, as the counterparty, will take title to the products that are the subject of the transactions it administers, and make other clarifications to enhance the NYISO’s protections against financial losses due to the bankruptcy of a Market Participant.

A. Clarification of NYISO Role as Counterparty and Right to Net or Set Off

The billing and payment provisions of the NYISO tariffs, set forth in OATT Section 2.7 and Services Tariff Sections 7.1 - 7.4, currently require Market Participants to make payments into and receive payments from a clearing account operated by the NYISO as trustee for the benefit of Market Participants. The NYISO is proposing to add new Services Tariff Section 7.1.1 and OATT Section 2.7.1.1 to establish that the NYISO will be the contracting counterparty, in its own name and right, for the purchase or sale of any product or service that is financially settled by the NYISO under its tariffs. As such, the NYISO is also proposing to clarify in its tariffs that Market Participants will make payments to and receive payments from the ISO, as the counterparty, *through* the ISO Clearing Account by revising current Services Tariff Sections 7.1,

⁴ *New York Independent System Operator, Inc.*, 136 FERC ¶ 61,193 (2011).

⁵ Order No. 741 at P 116.

⁶ Order No. 741 at P 117.

7.2.3.3, 7.2.5 - 7.2.7, 7.3 and OATT Sections 2.7.1, 2.7.3.3.3, 2.7.3.4 - 2.7.3.7, 2.7.4. In addition, the NYISO will delete the language in these tariff provisions requiring the NYISO to hold the funds in the ISO Clearing Account as trustee and prohibiting the NYISO from taking title in such funds.

The ISO-TO Agreement and ISO-NYSRC Agreement currently prohibit the NYISO from taking a financial interest in any commercial transaction involving the use of the NYS Power System or any other electrical system. The NYISO is proposing similar revisions to Section 3.04(g) of the ISO-TO Agreement and Section 3.3 of the ISO-NYSRC Agreement to allow the NYISO to take title to products and services purchased and sold in the NYISO-administered markets to the limited extent required for the NYISO to become the central counterparty to these transactions. The NYISO has obtained the written consent of the Transmission Owners and the NYSRC to make these proposed revisions, as evidenced by the executed versions of the amendments to these agreement included with this filing letter as Attachments V and VI.

New Services Tariff Section 7.1.2 and OATT Section 2.7.1.2 clarify the NYISO's right to net or set off any amounts owed between the NYISO and a Market Participant. Accordingly, language regarding netting and setoff in current Services Tariff Sections 7.2.1 and 7.5.5, and OATT Section 2.7.3.1 is deleted.

B. Limitation of Liability for Payment

By taking title in the products and services purchased and sold in the NYISO-administered markets, payment obligations will now flow to or from the NYISO in its own name and right. To protect the NYISO against insolvency in the event Market Participants do not timely pay in full the amount owed to the NYISO for their purchases, the NYISO is proposing to add new Services Tariff Section 2.7.1.4 and OATT Section 7.1.4 to limit the NYISO's liability for monies owed to Market Participants for a given settlement period to the amount the NYISO recovers from Market Participants for that settlement period plus the amount of Market Participant monies held by the NYISO in its Working Capital Fund.⁷

C. Other Enhancements

The NYISO proposes to make the following additional revisions to its tariffs to enhance the NYISO's protections against loss due to the bankruptcy of a Market Participant:

- Clarify in OATT Section 27 that NYISO may recover from Market Participants any bad debt loss resulting from non-payment of an obligation arising under the NYISO tariffs by a defaulting Market Participant.
- Clarify in OATT Sections 27.1, 27.2, and 27.3 that the NYISO recovers bad debt losses from Market Participants through a Schedule 1 charge.

⁷ The Commission accepted a similar liability limitation in accepting PJM's filing establishing PJM Settlement as its central counterparty. *See PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,205 (2010) at FN 20.

- Clarify in OATT Section 27.3 that the NYISO is permitted, but not obligated, to use the Working Capital Fund to pay Market Participants in full in the event of a shortfall resulting from a Market Participant payment default.
- Clarify in OATT Section 27.3 the procedures followed in the event of non-payment of WTSC and recovery of unpaid WTSC.
- Clarify in OATT Schedule 1, Section 6.1.4 that the NYISO has the right to recover the full amount of bad debt losses from Market Participants.
- Clarify in Services Tariff Section 26.6 that collateral posted by a Market Participant is security for the prompt payment of any of the Market Participant's obligations to the NYISO arising under the NYISO tariffs.
- Clarify in Services Tariff Section 7.5.3(i) and OATT Section 2.7.5.3(i) that the NYISO, as the central counterparty, has the sole and exclusive right to initiate debt collection procedures against defaulting Market Participants. This clarification provides further support that the mutuality required to set off obligations in a bankruptcy proceedings exists between the NYISO and its Market Participants.

D. Ministerial Tariff Revisions

The NYISO proposes to make the following ministerial revisions to enhance the clarity of the NYISO's tariffs:

- Delete from Services Tariff Section 7.2.2 and OATT Section 2.7.3.2 the language describing the NYISO's invoicing and payment procedures for services furnished before October 1, 2011 as these procedures are no longer applicable.
- Delete from OATT Section 2.7.4.2.1(ii) the language "seventy one (71)" days as this language reflects a typographical error. With this edit, this OATT provision is now consistent with its mirror provision in Services Tariff Section 7.4.1.1.2.
- Modify OATT Section 2.7.5.3(iii) to correct a typographical error by replacing the words "up to" with the words "a minimum of." With this edit, this OATT provision is now consistent with its mirror provision in Services Tariff Section 7.5.3(iii).

V. COMPLIANCE WITH SECTION 205 OF THE FEDERAL POWER ACT AND PART 35 OF THE COMMISSION'S REGULATIONS

The Commission has held that the PJM Settlement, Inc. ("PJM Settlement"), an entity established by the PJM Interconnection, LLC ("PJM") to be the counterparty to transactions in the PJM markets, must have rate schedules on file "showing all rates and charges for any transmission or wholesale sales subject to the jurisdiction of the Commission."⁸ The

⁸ See *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,205 (2010) at P 52.

Commission also held that PJM Settlement was not subject to the requirements associated with obtaining or maintaining market-based rate authority under Section 205 of the Federal Power Act (“FPA”).⁹

Unlike PJM, the NYISO is proposing to be the single counterparty to Market Participant transactions rather than establishing a separate entity to perform that function. The NYISO is a not-for-profit entity and it is not proposing to charge a separate rate or fee for serving as a single counterparty. The compliance tariff revisions proposed herein, together with the existing tariff provisions describing the operations of the NYISO-administered markets, establish all of the non-rate terms and conditions related to the NYISO’s role as a single counterparty. Accordingly, the NYISO is not proposing separate rate schedules to govern any additional FPA-jurisdictional activity that it might be deemed to undertake as a result of assuming the single counterparty function. The NYISO believes that its tariffs, as revised by this filing, will continue to satisfy Section 205’s filing requirements with respect to all of its FPA-jurisdictional activities.

In addition, like PJM Settlement, the NYISO will merely be in the chain of title for wholesale sales of electric energy, capacity, and ancillary services but will not submit bids or offers as a market seller. It will serve as the counterparty to the bids and offers of Market Participants but will have no discretion to transact, or not transact, at prices of its choosing nor have any discretion regarding which transactions clear the NYISO-administered markets or the prices at which they clear. Thus, the NYISO will not be a “seller” with discretion to sell at market-based rates as defined in the Commission’s regulations.¹⁰

Accordingly, the rationale for concluding that the NYISO should not require its own market-based rate authorization, or be subject to Subpart H of Part 35 of the Commission’s regulations, is at least as strong in the NYISO’s case as it was for PJM Settlement. The NYISO is therefore not requesting market-based rate authority and requests that the Commission confirm that it is not required when it issues an order addressing this compliance filing.

Finally, because the NYISO is not establishing a new corporate entity to serve as a single counterparty, and in light of the Commission’s holdings with respect to PJM Settlement, the NYISO does not anticipate changing its practices related to Electronic Quarterly Reports (“EQRs”) as a result of this filing.⁸

⁹ *Id.* at P 57.

¹⁰ See 18 C.F.R. § 35.36(a)(1) (defining a seller subject to the market-based rate regulations as “any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services *at market-based rates* under section 205 of the Federal Power Act” (emphasis added)). Market Participants selling into the NYISO-administered markets at market-based rates would remain subject to all regulatory requirements for such sales as exist today. The specification of the NYISO in the chain of title would not affect the applicability of these requirements to Market Participants.

⁸ See *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,205 (2010) at P 60. Similarly, because the NYISO is not establishing a new corporate entity there does not appear to be any need for a waiver of Section 382.10 of the Commission’s regulations regarding annual charges for public utilities.

VI. EFFECTIVE DATE

The NYISO respectfully requests that this filing become effective on July 1, 2012, which date is the first day of the third quarter of the NYISO's fiscal year. This effective date will allow the NYISO to avoid potential financial record keeping burdens related to the proposed revisions becoming effective during the middle of an accounting period.

VII. 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.

VIII. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the compliance tariff revisions proposed herein, without any modification, and make them effective on the date requested.

Respectfully submitted,
/s/Ted J. Murphy
Ted J. Murphy
Counsel to
the New York Independent System Operator, Inc.

cc: Michael A. Bardee
Gregory Berson
Connie Caldwell
Anna Cochrane
Jignasa Gadani
Lance Hinrichs
Jeffrey Honeycutt
Michael Mc Laughlin
Kathleen E. Nieman
Daniel Nowak
Rachel Spiker

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 April, 2012.

/s/ Joy A. Zimmerlin

Joy A. Zimmerlin
New York Independent System Operator, Inc
10 Krey Blvd.
Rensselaer, NY 12114
(518) 356-6207