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

**Re: *New York Independent System Operator, Inc., Compliance Filing*
Docket No. EL11-42-__**

Dear Ms. Bose:

The New York Independent System Operator, Inc. (“NYISO”) submits this compliance filing in response to the Commission’s June 22, 2012 order (“June 22 Order”)¹ on the complaint filed by Astoria Generating Company, L.P., NRG Power Marketing LLC, Arthur Kill Power, LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC, and TC Ravenswood (collectively, “Complainants”). The June 22 Order generally affirmed the transparency of the NYISO’s processes and found Complainants’ claims that the buyer-side market power mitigation rules² (“BSM Rules”) lacked an objective tariff basis to be without merit. It also directed certain compliance actions and tariff revisions. This filing proposes compliance tariff revisions to the NYISO’s Services Tariff, and explains additional compliance actions in accordance with the June 22 Order’s directives. The NYISO requests that the Commission accept these modifications effective June 22, 2012.

I. LIST OF DOCUMENTS SUBMITTED

¹ *Astoria Generating Company, L.P., et al. v. New York Independent System Operator, Inc.*, 139 FERC ¶ 61,244 (2012).

² The BSM Rules, which are the subject of the June 22 Order, are the currently-effective buyer-side capacity market mitigation provisions in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) Attachment H, including revisions that were accepted by the Commission, effective November 27, 2010, in its series of orders in Docket No. ER10-3043. *See* June 22 Order at P 6.

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The NYISO respectfully submits the following documents:

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

II. BACKGROUND

The June 22 Order directed the NYISO to make a compliance filing with respect to certain aspects of the Offer Floor⁴ mitigation exemption determination test. While the June 22 Order found that the “NYISO’s tariff is silent on whether and how inflation should be included” in the Offer Floor and mitigation exemption determination test,⁵ it directed the NYISO to: (1) consistently apply an inflation adjustment to all parts of the mitigation exemption test and Offer Floor; (2) apply an inflation adjustment that is “consistent with that used in the determination of the ICAP Demand Curve”; and (3) use “values from the same demand curve that is effective at the time [the NYISO] makes an exemption determination in comparing Default net Cost of New Entry (CONE) with spot market auction prices.”⁶ Additionally, although the June 22 Order found the NYISO’s implementation of the BSM Rules to be “sufficiently transparent and objective” it directed that: (1) the NYISO post numerical examples and narratives of the application of the Offer Floor exemption determination methodology;⁷ (2) that the NYISO post information on the exempt/non-exempt

³ Consistent with the Commission’s e-Tariff procedures, the compliance tariff revisions proposed herein are shown as blacklines on the most currently submitted version of the tariff. It includes the compliance tariff revisions submitted in the NYISO’s June 29, 2012 New Capacity Zone Market Mitigation Measures filing, which is currently pending in Docket No. ER12-360-001 (“NCZ Market Mitigation Measures”) and revisions proposed in the August 12, 2010 (as refiled on August 21, 2010) filing, currently pending in Docket No. ER10-2371-000. If the Commission accepts these compliance modifications prior to acceptance of those filings, the NYISO respectfully requests that the Commission direct it to revise the tariff as necessary to reflect the fact that those filings are still pending.

⁴ Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”), and if not defined therein, in the NYISO Open Access Transmission Tariff (“OATT”).

⁵ *Id.* at P 60.

⁶ *Id.* at P 3.

⁷ *Id.* at PP 44, 50. The NYISO’s posting will provide examples of the calculation of the mitigation exemption determinations using the assumptions explained in the Request, including the

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outcome of individual mitigation determinations;⁸ and (3) required NYISO's Market Monitoring Unit ("MMU") to prepare a public report "discussing its assessment of the buyer-side mitigation determinations" which should be published concurrently with the NYISO's mitigation determination results.⁹ The Commission rejected Complainant's other assertions regarding the NYISO's review of bilateral contracts and the use of natural gas future prices in making determinations under the BSM rules.¹⁰

On July 23, 2012, the NYISO filed a request for clarification, or in the alternative rehearing, of the June 22 Order ("Request"). The Request is currently pending in this proceeding. As further explained below, the NYISO's proposed compliance tariff revisions would apply inflation in BSM calculations in a manner that is consistent with the NYISO's understanding of the June 22 Order's directives, as explained in the Request.

III. DESCRIPTION OF PROPOSED COMPLIANCE TARIFF REVISIONS

A. Compliance with Directives Regarding Increased Transparency

Although the June 22 Order found that the NYISO had complied with its tariff requirements regarding the transparency provisions of the BSM Rules, it directed additional tariff revisions to provide for even greater transparency.¹¹ First, the June 22 Order directed the NYISO to "file tariff revisions within 45 days of the date of this order to require the disclosure of the identity of the project and the final exempt/non-exempt determination, as soon as they were final."¹² In compliance with this directive the NYISO proposes to replace the content of Section 23.4.5.7.8 with the following new language, moving the existing content of the section down and renumbering accordingly:

application of the inflation component of the escalation rate to the Part B test and Offer Floor for non-exempt units. The NYISO's examples, in compliance with P 49 of the June 22 Order, will reflect the NYISO's methodology as consistent with those additional requested clarifications. Those examples will be posted on August 6, 2012.

⁸*Id.* at P 50. Consistent with P 51, the NYISO notified stakeholders on July 10, 2012 that the only project for which it made a final determination was the Hudson Transmission Partners project.

⁹June 22 Order at PP 3, 50

¹⁰ *Id.*

¹¹ *Id.* at PP 44, 48.

¹² *Id.* at P 51.

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23.4.5.7.8 The ISO shall post on its website the identity of the project in a Mitigated Capacity Zone and the determination of either exempt or non-exempt as soon as the determination is final.

Second, the June 22 Order directed the NYISO to “submit tariff sheets outlining [the] responsibility of the MMU” to prepare a written report “confirming whether NYISO’s mitigation and exemption determinations and calculations were conducted in accordance with the terms of the Services Tariff, and, if not, identifying the flaws inherent in NYISO’s approach.”¹³ The Commission further directed that “[t]his report should be presented concurrently with the NYISO’s announcement of the mitigation test results.”¹⁴ In compliance with this requirement, the NYISO proposes to further modify Services Tariff Attachment H Section 23.4.5.7.8 to include a second sentence which states:

Concurrent with the ISO’s posting, the Market Monitoring Unit shall publish a report on the ISO’s determinations, as further specified in Sections 30.4.6.2.11 and 30.10.4 of Attachment O to this Services Tariff.

Additionally, the NYISO proposes to replace the content of Services Tariff Attachment O Section 30.10.4 with the following new language, moving the existing content of the section down and renumbering accordingly:

30.10.4 Reports on Offer Floor or Exemption Determinations

The Market Monitoring Unit shall prepare a written report confirming whether the ISO’s Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 and 23.4.5.7.7 of the Market Mitigation Measures were conducted in accordance with the terms of the Services Tariff, and, if not, identifying the flaws inherent in the ISO’s approach. The Market Monitoring Unit’s report shall be presented concurrently with the ISO’s posting of the exempt/non-exempt determinations.¹⁵

¹³ June 22 Order at P 130.

¹⁴ *Id.*

¹⁵ Note that this modification also includes revisions to address the MMU’s report on the grandfathering of a proposed Generator or UDR project pursuant to 23.4.5.7.7 in order to make the New Capacity Zone Market Mitigation Measures tariff revisions submitted in the NYISO’s June 29, 2012 filing in Docket No. ER12-360-001 (“NCZ Compliance Filing”) consistent with the BSM Rule revisions directed in the June 22 Order. The NCZ Compliance Filing had noted that it would propose any necessary revisions to conform the tariff provisions proposed therein to make them consistent with the June 22 Order in its compliance filing in this proceeding. *See* NCZ Compliance Filing at n.2. The

Corresponding revisions have also been made to Section 30.4.6.2.11, as follows:

30.4.6.2.11 When evaluating a request by a Developer or Interconnection Customer pursuant to Section 23.4.5.7 of the Market Mitigation Measures, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. As required by Section 23.4.5.7.8 of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Section 23.4.5.7.2 of the Market Mitigation Measures were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO's approach. This report shall be presented concurrent with the ISO's posting of its mitigation exemption determinations.

B. Compliance with Directives Regarding Inflation Adjustments

The June 22 Order directed the NYISO to make several modifications with respect to the use of inflation adjustments in Offer Floor and exemption calculations. With respect to the Part B mitigation exemption test, the June 22 Order found that “an inflation factor should be applied to Unit net CONE as part of the exemption analysis to have a valid comparison of Unit net CONE to each year of the Mitigation Study Period projected demand curve prices.”¹⁶ The Commission further held that

in making the Unit exemption determination NYISO should ‘inflate’ or restate Unit net CONE and demand curve price values projected for the three-year future Unit Mitigation Study Period to reflect inflation. The average of each year’s inflated Unit net CONE values for that three-year period should be compared to the average of the forecasted demand curve prices for that period.¹⁷

Finally, the June 22 Order stated that: “[t]o ensure consistency across the buyer-side mitigation rules and clarity to market participants, tariff revisions should state that inflation

Commission has previously authorized the NYISO to include these kinds of limited, but necessary, clarifications and conforming changes in compliance filings and should follow that precedent here. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh’g*, 127 FERC ¶ 61,042 (2009) (accepting proposed tariff revisions necessary to correct drafting errors or ambiguities).

¹⁶ June 22 Order at P 60.

¹⁷ *Id.* at P 61.

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will be applied in accordance with the inflation rate component of the escalation factor determined in the demand curve process.”¹⁸

As explained in the Request, the NYISO interprets the Commission’s directive with respect to application of inflation in the Part B test,¹⁹ to require that the NYISO use the escalation factor from the relevant ICAP Demand Curve to escalate the Unit Net CONE and projected ICAP Demand Curve prices for any year covered by the Part B test for which there are accepted ICAP Demand Curves. For years encompassed by the Part B test for which the accepted ICAP Demand Curves do not apply (*i.e.*, because the Part B test looks further into the future than the three year duration of the ICAP Demand Curves), the NYISO will use the inflation rate component of the currently effective ICAP Demand Curve escalation factor. As explained in the Request, this approach is consistent with the Commission’s directive that the NYISO should only use the inflation rate when projecting values for the three-year future Mitigation Study Period, and that the Part B test be an “apples-to-apples” comparison of the Unit Net CONE to ICAP prices over the Mitigation Study Period. Therefore, the NYISO proposes compliance tariff revisions to Services Tariff Attachment H Section 23.4.5.7.4,²⁰ as follows:

23.4.5.7.4 For purposes of 23.4.5.7.2(b), the ISO shall identify the Unit Net CONE and price on the ICAP Demand Curve projected for a future Mitigation Study Period using: (i) the escalation factor of the relevant ICAP Demand Curves for any year for which there are accepted ICAP Demand Curves; or (ii) the inflation rate component of the escalation factor of the relevant ICAP Demand Curve for any year for which the accepted ICAP Demand Curves do not apply. For purposes of 23.4.5.7.2(a), the ISO shall use the escalation factor of the relevant ICAP Demand Curves. Mitigation Net CONE for the each year after the last year covered by the most recent Demand

¹⁸ *Id.* at P 63.

¹⁹ Services Tariff § 23.4.5.7.2 sets forth the mitigation exemption determination which has two parts (*i.e.*, the Part A and Part B tests). The Part A test does not use Unit Net CONE values and assumes that the project offers into the ICAP Spot Market Auction at a price equal to zero. The Part B test evaluates whether a project is projected to be economic over the first three years after entry.

²⁰ Note that these revisions are to provisions proposed by the NYISO in its August 12, 2010 (as refiled on August 21, 2010) buyer side market mitigation measures filing, currently pending in Docket No. ER10-2371-000. If the Commission accepts these compliance modifications prior to acceptance of the revisions proposed in Docket No. ER10-2371-000, the NYISO respectfully requests that the Commission direct it to revise the tariff as necessary to reflect the fact that those provisions are still pending.

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~~Curves approved by the Commission shall be increased by the escalation factor approved by the Commission for such Demand Curves.~~

Additionally, the NYISO proposes to add language to cross-reference Section 23.4.5.7.4, in Section 23.4.5.7.2 which contains the tariff language setting forth the Part A and Part B tests:

23.4.5.7.2 An Installed Capacity Supplier, in a Mitigated Capacity Zone for which the Commission has accepted an ICAP Demand Curve, shall be exempt from an Offer Floor if: (a) the price that is equal to the (x) average of the ICAP Spot Market Auction price for each month in the two Capability Periods, beginning with the Summer Capability Period commencing three years from the start of the year of the Class Year (the “Starting Capability Period”) is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than (y) the highest Offer Floor based on the Mitigation Net CONE that would be applicable to such supplier in the same two (2) Capability Periods (utilized to compute (x)), or (b) the price that is equal to the average of the ICAP Spot Market Auction prices in the six Capability Periods beginning with the Starting Capability Period is projected by the ISO to be higher, with the inclusion of the Installed Capacity Supplier, than the reasonably anticipated Unit Net CONE of the Installed Capacity Supplier. For purposes of the determinations pursuant to (a) and (b) of this section, the ISO shall identify Unit Net CONE and the price on the ICAP Demand Curve projected for a future Mitigation Study Period consistent with Section 23.4.5.7.4.

Additionally, with respect to the Offer Floor to be applied to a non-exempt unit after entry, the June 22 Order directed that “[t]o maintain consistency within the buyer-side mitigation rules, tariff revisions should state that inflation will be applied annually to offer floors of a non-exempt unit entering the market, at the inflation rate component of the escalation factor determined in the demand curve process.”²¹ In compliance with the June 22 Order, the NYISO proposes the following compliance tariff revision to Services Tariff Section 23.4.5.7:

23.4.5.7 Unless exempt as specified below, offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier: (i) shall equal or exceed the applicable Offer Floor; and (ii) can only be offered in the ICAP Spot Market Auctions. The Offer Floor shall apply to offers for Unforced Capacity from the Installed Capacity Supplier, if it is not a Special Case Resource, starting with the Capability Period for which the Installed

²¹ June 22 Order at P 76.

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Capacity Supplier first offers to supply UCAP; provided, however, that portion of a resource's UCAP (rounded down to the nearest tenth of a MW) that has cleared for any twelve, not-necessarily-consecutive, months shall cease to be subject to the Offer Floor requirement. Offer Floors shall be adjusted annually using the inflation rate component of the escalation factor of the relevant effective ICAP Demand Curves that have been accepted by the Commission.

Further, the June 22 Order stated that adjusting for inflation should maintain "the originally determined offer floor in 'real' terms while at the same time making such values comparable to the prices in the year in which the mitigation occurs." Thus, the NYISO proposes to modify Section 23.4.5.7.3.6 as follows:

23.4.5.7.3.6 If an Installed Capacity Supplier demonstrates to the reasonable satisfaction of the ISO that the value equal to the first of the three year values that comprise its Unit Net CONE is less than any Offer Floor that would otherwise be applicable to the Installed Capacity Supplier, then its Offer Floor shall be reduced to a numerical value equal to the first year of its Unit Net CONE. If the Installed Capacity Supplier first offers UCAP prior to the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be reduced using the inflation rate component identified in Section 23.4.5.7. If the Installed Capacity Supplier first offers UCAP after the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be increased using the inflation rate component identified in 23.4.5.7.

As the NYISO explained in its request for clarification, where an entrant initially offers UCAP prior to the first year of the Mitigation Study Period, it will adjust for early entry and deflate the Offer Floor for inflation." Therefore, The NYISO also proposes modifications to Sections 23.4.5.7.2.4 and 23.4.5.7.3.2 to reflect its understanding that the NYISO should compare the Default Offer Floor to the annual net CONE value for the first year of the Mitigation Study Period, as follows:

23.4.5.7.2.4 ...

When the ISO is evaluating more than one NCZ Examined Project concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each NCZ Examined

Project the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then escalated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period. ~~(i) its Unit Net CONE or (ii) the numerical value equal to 75 percent of the Mitigation Net CONE.~~

23.4.5.7.3.2 ...

When the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each Examined Facility the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then escalated in accordance with 23.4.5.7 for each of the year two and year three of the Mitigation Study Period. ~~(i) its Unit Net CONE or (ii) the numerical value equal to 75% of the Mitigation Net CONE.~~

Finally, the NYISO proposes to modifications to clarify that the periodic review of the ICAP Demand Curves, and corresponding consultant's report, will assess and identify an escalation factor and inflation rate component for such escalation factor. In Section 5.14.1.2, the NYISO proposes to add the following item to the list of items that the periodic review of the ICAP Demand Curves will also assess: “; and (iii) the escalation factor and inflation of the escalation factor applied to the ICAP Demand Curves”. Also, at the end of Section 5.14.1.2.11, the NYISO proposes add the following language: “and the inflation rate component of the escalation factor applied to the ICAP Demand Curves”.

IV. MARKET MONITORING UNIT REVIEW

The MMU was given an opportunity to review and comment on the proposed compliance tariff revisions. The NYISO carefully considered and incorporated the MMU's recommendations in this compliance filing.

V. REQUESTED EFFECTIVE DATE

The NYISO requests that the Commission accept these proposed modifications effective June 22, 2012, the date of the Commission's order directing the modifications.

VI. SERVICE

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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 accept this compliance filing to become effective June 22, 2012.

Respectfully submitted,

/s/ Vanessa A. Colón

Vanessa A. Colón

Counsel for the

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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 6th day of August, 2012.

/s/ Joy A. Zimmerlin

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