

January 26, 2010

By Hand Delivery

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

**Re: *New York Independent System Operator, Inc., Proposed Tariff
Revisions Improving the Interconnection Study Queue Process,
Docket No. ER10-290***

Dear Secretary Bose:

The New York Independent System Operator, Inc. (“NYISO”) submits the following in response to the deficiency letter issued on January 6, 2010 in the above-referenced proceeding (“January 6 Letter”).¹ As requested in the January 6 Letter, six copies of this response are being sent to your office, with a seventh copy to Mr. William Lohrman, Office of Energy Market Regulation, Division of Electric Power Regulation - East (Room 81-13).

On November 18, 2009, the NYISO submitted pursuant to Section 205 of the Federal Power Act, several proposed revisions to its Open Access Transmission Tariff (“OATT”) intended to improve the NYISO’s interconnection process. The January 6 Letter requests additional information regarding two of the proposals contained in the November 18 Filing.

I. List of Documents Submitted

The NYISO submits the following documents:²

1. This filing letter;
2. A table summarizing study deposits and application fee under the proposed tariff provisions (“Attachment A”);

¹ *New York Independent System Operator, Inc.*, Deficiency Letter at 2, Docket No. ER10-290-000 (issued January 6, 2010).

² The January 6 Letter directs the NYISO to submit a notice of amendment to the filing pursuant to Section 35.8(b) of the Commission’s regulations. The NYISO notes, however, that the Commission has revised its regulations to eliminate this notice requirement. See Federal Energy Regulatory Commission, Documents & Filings: Notice Format, October 9, 2009, *available at* <<http://www.ferc.gov/docs-filing/notice-form.asp>>.

3. A table providing a summary of NYISO Feasibility Study and SRIS costs from January 1, 2008 through August 31, 2009 (“Attachment B”).

II. Deliverability Study

In its filing, the NYISO proposed modifications to the base case assumptions for certain Interconnection Studies.³ The studies impacted by the proposal are the Interconnection Feasibility Study (“Feasibility Study”) and Interconnection System Reliability Impact Study (“SRIS”) for Large Facilities and the System Impact Study (“SIS”) for Small Generating Facilities.⁴ The January 6 Letter refers to these proposed base case modifications and asks the NYISO to provide a discussion as to how the proposed changes will impact the deliverability determination of proposed projects seeking interconnection under the Capacity Resource Interconnection Service (“CRIS”).⁵

The proposed modifications will have no impact on the Deliverability Study conducted for projects seeking CRIS. The Deliverability Study is performed on a combined basis for a group or “Class Year” of projects as part of the Class Year Interconnection Facilities Study. The proposed modifications to base case assumptions contained in the November 18 Filing do not modify the base case assumptions used in the Deliverability Study or in any portion of the Class Year Study. Only the base case assumptions in the Feasibility Study, SRIS, and SIS are proposed to be modified. No deliverability analysis is performed in those three studies.⁶

As explained in the November 18 Filing, the currently effective base case requirements for the Feasibility Study, SRIS, and SIS are over-inclusive with regard to proposed projects and typically do not reflect the base cases that are ultimately used in the final Class Year Interconnection Facilities Study.⁷ The proposed modifications will allow the Feasibility Study, SRIS, and SIS to be completed more quickly using reasonable base case assumptions.

³ Capitalized terms not otherwise defined have the meaning ascribed to them in Article I and Attachments S, X, or Z of the NYISO OATT.

⁴ *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Improving the Interconnection Study Queue Process at 2-3, Docket No. ER10-290-000 (filed November 18, 2009) (“November 18 Filing”).

⁵ January 6 Letter at 2.

⁶ See NYISO OATT Attachment X at Section 3.2 (stating that “[t]he NYISO evaluates an Interconnection Request for compliance with the Deliverability Interconnection Standard formally during the Class Year Deliverability Study”); NYISO OATT Attachment Z at Section 1.1.17 (stating that where a Small Generating Facility elects Capacity Resource Interconnection Service “[t]he NYISO will .. place the Small Generating Facility in the then open Class Year and evaluate the Small Generating Facility for deliverability, as a member of the Class Year, following the same rules and procedures in Attachment S to the NYISO OATT applicable to other members of the Class Year being evaluated for deliverability.”).

⁷ November 18 Filing at 2-3.

III. Study Deposit Amounts and Application Fee

The November 18 Filing proposed to modify certain study deposits and add an application fee for Large Facilities under the Large Facility Interconnection Procedures (“LFIP”).⁸ The January 6 Letter requests that the NYISO clarify what deposits and fees would be refundable and to provide “details supporting the derivation of the costs supporting all of the new and revised fees . . .” The January 6 Letter requests that the NYISO explain how these proposed revisions comport with Order No. 2003.

The Commission has previously stated it would “review such variations from Order No. 2003 under the ‘independent entity variation standard,’ which allows independent transmission providers flexibility in developing interconnection procedures to meet regional needs.”⁹ The NYISO submits that the proposed modifications to certain study deposits and addition of an application fee should be approved by the Commission under the independent entity variation standard, for the reasons described below.

A. Application Fee and Accelerated Study Deposit

Under the proposal contained in the November 18 Filing, the financial commitment required at the time a Developer of a Large Facility submits its Interconnection Request will increase. Specifically, the currently required \$10,000 refundable deposit will be replaced with a non-refundable application fee.¹⁰ Additionally, \$30,000 of the Feasibility Study deposit will be due at the time of the Interconnection Request, instead of when the Feasibility Study Agreement is executed. This study deposit will be refundable, as described below. The proposed changes are appropriate under the independent entity variation standard described in Order No. 2003.

This proposal is intended to raise the bar for entry into the interconnection queue to a reasonable level, so that projects are more likely to be viable at the time they submit their Interconnection Request. The current requirements have not been successful in discouraging speculative projects from entering the queue. The current requirements provide little financial disincentive to Developers from submitting an Interconnection Request before a project is ready to proceed through the process. The NYISO has seen

⁸ These proposals do not modify the study deposits required for Small Generating Facility, *ie.*, projects that are 20 MW or less. These proposals also do not modify the current deposit in lieu of site control or the deposit required for the Class Year Interconnection Facilities Study. See Attachment A for a table summarizing the proposed tariff provisions on study deposits and application fee for Large Facilities.

⁹ See *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114 at P 5 (2009), *citing*, *Interconnection Queuing Practices*, 122 FERC ¶61,252 at P 13 (2008).

¹⁰ The proposed application fee will be split evenly between the NYISO and the Connecting Transmission Owner.

significant numbers of projects entering the interconnection queue and then withdrawing very early in the study process, often before any study is completed.

For example, of the Interconnection Requests for Large Facilities submitted in 2008 and 2009, over 40% of them had withdrawn from the queue as of December 22, 2009.¹¹ The NYISO dedicates significant time to each Interconnection Request, even when requests are withdrawn prior to completion of an initial Interconnection Study. The significant number of projects that withdraw from the queue utilize the resources of the NYISO, and of the Transmission Owners, that could otherwise be dedicated to projects that are progressing towards commercial operation. The NYISO undertakes certain administrative functions and other activities in support of project development that are not recovered as study costs. These functions include the processing and initial review of Interconnection Requests, preparation for scoping meetings and development of study agreements. The Transmission Owners undertake similar support and administrative activities.

The Commission has previously accepted proposals to increase the required financial commitments at the time of an Interconnection Request as just and reasonable and appropriate under the independent entity variation standard.¹² The Commission recognized that “deposit requirements like these serve a different purpose from simple rates meant to recover costs, and the question of whether they are excessive turn primarily on whether their purpose can be served with some lower level of deposit.”¹³ The proposal here is relatively modest, so that any lower level is not likely to have the desired effect.¹⁴ The Commission accepted such proposals where they “strike an appropriate balance that will reduce the number of speculative projects clogging the interconnection queue without being excessively high so as to prevent legitimate projects

¹¹ This calculation was made based on data contained in the interconnection queue posted on the NYISO’s website, dated December 22, 2009. This posted queue contains 126 separately-queued projects representing 25,814 MW (this data represents all categories of projects listed on the queue, not just Large Facilities).

¹² The Commission has accepted a \$5,000 non-refundable application fee for the Midwest Independent Transmission System Operator (“Midwest ISO”). See *Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,183 at PP 46, 56 (2008). Furthermore, the California Independent System Operator requires an initial \$50,000 deposit and Midwest ISO requires capacity based study deposits ranging from \$10,000 to \$120,000 due at the time of the Interconnection Request. See *California Independent System Operator Corp.*, 124 FERC ¶ 61,292 at P 60 (2008) and *Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,183 at PP 46, 56 (2008).

¹³ *California Independent System Operator Corp.*, 124 FERC ¶ 61,292 at P 60 (2008).

¹⁴ The NYISO already allows Developers to access information about the transmission system prior to the submission of an Interconnection Request. For example, an entity considering submission of an Interconnection Request may request base case data from the NYISO on which the entity can complete a preliminary analysis of the proposed project.

from pursuing interconnection requests.”¹⁵ The NYISO has worked with its stakeholders to develop a proposal that achieves that balance.

B. Feasibility Study Deposits

Under the NYISO’s proposal, the study deposit for a Feasibility Study will be \$30,000 if the Developer hires a consultant to perform the analytical work and \$60,000 if the NYISO performs the analytical work. This is an increase from the current deposit of \$10,000 (\$20,000 including the current deposit submitted with the Interconnection Request). The study deposit for the Feasibility Study will continue to be refundable, as it is under current tariff provisions. Specifically, the study deposit for the Feasibility Study will be refunded to the Developer, to the extent that the study deposit exceeds actual study costs, when the Feasibility Study is completed or, alternatively, when a project withdraws.¹⁶

The NYISO reviewed actual study costs for Feasibility Studies completed between January 1, 2008 and August 31, 2009. This data is contained in Attachment B of this response. The actual study costs varied significantly based on whether the NYISO or a consultant hired by the Developer performed the analytical portion of the study.¹⁷ This data shows that in every case where the NYISO performed the analysis, the actual cost of the Feasibility Study exceeded the current deposit level of \$20,000. In fact, the actual cost of several studies exceeded \$50,000. When a third-party consultant performed the analytical work, the average cost was less, but still exceeded the current deposit requirement in several cases.

C. SRIS Deposits

Under the NYISO’s proposal, the study deposit for an SRIS will be \$40,000 if the Developer hires a consultant to perform the analytical work and \$120,000 if the NYISO performs the analytical work. This is a change from the current requirement of \$50,000.

¹⁵ *Id.*

¹⁶ Developers may elect to have the NYISO apply any portion of a study deposit that would otherwise be refunded towards the deposit of a subsequent study. *See* OATT Attachment X at Section 13.3.1 (stating that “[a]ny difference between the study deposit and the actual cost of the applicable Interconnection Study shall be paid by or refunded, except as otherwise provided herein, to Developer or offset against the cost of any future Interconnection Studies associated with the applicable Interconnection Request prior to beginning of any such future Interconnection Studies.”).

¹⁷ Under Section 13.4 of the LFIP, the NYISO permits Developers to hire third-party consultants to perform portions of interconnection studies, including Feasibility Studies and SRISs. If a Developer elects to hire a consultant, the cost of that consultant’s work is directly paid by the Developer to the consultant. Accordingly, these costs are not reflected in the study costs tracked or invoiced by the NYISO. In cases where the Developer elects to hire a consultant, the NYISO and the Connecting Transmission Owner still undertake certain study activities, including providing data, prepare base cases, and reviewing draft study reports.

Notably, the proposed SRIS deposit is actually reduced for Developers that elect to hire a third-party consultant to perform the SRIS analysis.¹⁸ The study deposit for the SRIS will continue to be refundable, as it is under current tariff provisions. Specifically, the study deposit for the SRIS will be refunded to the Developer, to the extent that the study deposit exceeds actual study costs, when the SRIS is completed or, alternatively, when a project withdraws.

The NYISO reviewed actual study costs for SRISs completed between January 1, 2008 and August 31, 2009. This data is contained in Attachment B of this response. As with the Feasibility Study, the actual study costs of SRISs varied significantly based on whether the NYISO or a consultant hired by the Developer performed the analytical portion of the study. This data shows that in every case where the NYISO performed the analysis for the SRIS, the actual cost exceeded the current deposit level of \$50,000. When a third-party consultant performed the analytical work, the cost of the study was consistently less than the current deposit requirement. Accordingly, the NYISO is proposing to reduce the deposit required for an SRIS when the Developer hires a consultant to perform the analytical portion of the study.

D. Modified Study Deposits Under the Independent Entity Variation Standard

The proposed changes to the study deposits for Feasibility Studies and SRISs are appropriate under the independent entity variation standard described in Order No. 2003. The Commission recognized in the Order on Technical Conference that increasing these Interconnection Study deposits may be appropriate. Specifically, the Commission stated that:

[I]t may be appropriate to increase the amount of the deposits required at the different stages of the process to more accurately reflect the cost of the necessary studies. Such a change would not only be consistent with traditional ratemaking principles, but would also increase the likelihood that only projects that are likely to be commercially viable (and hence willing to commit to the cost of such studies in advance) are in the queue.¹⁹

The goal of the modified study deposits proposed by the NYISO is to align the study deposit amounts more closely with expected study costs, so that the actual costs of the study will not exceed the study deposit in most if not all cases. As discussed above, the NYISO reviewed actual study costs for completed Feasibility Studies and SRISs to determine whether the study deposits were sufficient to cover actual study costs. Consistent with the principle of cost causation, the proposed study deposits vary

¹⁸ Approximately 80% of Developers undergoing an SRIS elect to hire a consultant.

¹⁹ *Interconnection Queuing Practices*, 122 FERC ¶ 61,252 at P 16 (2008).

depending on whether the NYISO or the Developer is performing the analytical portion of the study. Further, the proposed modifications to the deposits will allow Developers to better estimate interconnection study costs prior to entering the interconnection queue. The proposal will also reduce the likelihood of unrecoverable study costs.

IV. Stakeholder Participation in Development of Proposals

The Order on Technical Conference indicated that “while the Commission could take action to impose solutions” it would “allow each region the opportunity to propose its own solution” and encouraged “RTOs and ISOs to work with their stakeholders to develop consensus proposals.”²⁰ The NYISO has worked extensively with its stakeholders to identify a set of queue reform proposals that address New York’s regional needs. The set of queue improvement changes submitted in the November 18 Filing, which included the proposal on deposits and the application fee, received broad support among stakeholders. The proposals were unanimously approved by the NYISO’s Operating Committee and Management Committee. Furthermore, no protests have been filed with the Commission regarding the November 18 Filing.

V. Request Concerning Effective Date

The NYISO respectfully requests that the Commission accept all of the tariff amendments proposed in the November 18 Filing with an effective date of January 17, 2010. Furthermore, the NYISO respectfully requests that the Commission waive or shorten any additional comment period associated with this response so that a Commission order may be issued by February 26, 2010. There is good cause to grant this request since this response does not modify any of the original proposals contained in the November 18 Filing. Stakeholders have had notice of the proposed effective date since November 18, 2009 and have had significant opportunity prior to that date to review the proposals through the NYISO stakeholder process. The requested effective date and an order on or before February 26, 2010, is important to provide clarity regarding the applicable rules to Developers seeking to enter Class Year 2010, which is scheduled to begin on March 1, 2010.

²⁰ *Id.* at P 8.

Honorable Kimberly D. Bose
January 26, 2010
Page 8 of 8

VI. Conclusion

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept for filing the proposed tariff revisions contained in the November 18 Filing with an effective date of January 17, 2010.

Respectfully Submitted,

Karen Georgenson Gach
Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
(518) 356-7530
kgach@nyiso.com

Attachment A

Table of Proposed Study Deposits and Application Fee

Attachment A**Proposed Study Deposits and Application Fee**

	Deposit/Fee	Refundable/Non-Refundable
Interconnection Request	\$10,000 - Application fee split between the Connecting Transmission Owner and the NYISO	Non-refundable
	\$30,000 - Study deposit for Feasibility Study	Refundable, applied to study costs
	\$10,000 - Deposit in Lieu of Site Control (unchanged)	Refundable as provided for under current tariff (unchanged)
Feasibility Study Agreement	Additional \$30,000 – Only if the NYISO is performing study analysis (if consultant hired by Developer is performing analysis, the \$30,000 deposit submitted with Interconnection Request for Feasibility Study is sufficient)	Refundable, applied to study costs
System Reliability Impact Study Agreement	\$40,000 – If Consultant hired by Developer is performing study analysis	Refundable, applied to study costs
	\$120,000 – If NYISO is performing study analysis	Refundable, applied to study costs
Facilities Study Agreement	Higher of \$100,000 or estimated monthly invoice (unchanged)	Refundable as provided for under current tariff (unchanged)

Attachment B

Summary of NYISO Feasibility Study and SRIS Costs From January 1, 2008 through August 31, 2009

Summary of NYISO Feasibility Study and SRIS Costs						Attachment B
(From January 1, 2008 through August 31, 2009)						
Feasibility Studies						
				Year	NYISO+TO	
	<u>Project</u>	<u>MW Range</u>	<u>Lead Party</u>	<u>Completed</u>	<u>Total Cost</u>	
	A01	21 - 100	NYISO	2008	\$ 40,861.86	
	A02	> 200	NYISO	2008	\$ 56,011.18	
	A03	101 - 200	NYISO	2008	\$ 26,148.57	
	A04	21 - 100	NYISO	2008	\$ 35,935.00	
	A05	101 - 200	NYISO	2008	\$ 55,799.91	
	A06	> 200	NYISO	2008	\$ 36,801.50	
	A07	101 - 200	NYISO	2008	\$ 31,277.12	
	A08	21 - 100	NYISO	2008	\$ 51,180.14	
	A09	101 - 200	NYISO	2009	\$ 28,575.44	
	A10	> 200	Developer	2008	\$ 9,662.04	
	A11	21 - 100	Developer	2008	\$ 30,366.04	
	A12	21 - 100	Developer	2009	\$ 18,578.48	
	A13	21 - 100	Developer	2008	\$ 8,715.95	
	A14	> 200	Developer	2008	\$ 9,126.50	
	A15	21 - 100	Developer	2008	\$ 6,689.15	
	A16	> 200	Developer	2008	\$ 16,189.00	
	A17	> 200	Developer	2009	\$ 48,032.55	
					\$509,950.43	
Statistics:						
		<u># of Studies</u>	<u>Highest Cost</u>	<u>Lowest Cost</u>	<u>Average Cost</u>	<u>Proposed Deposit(s)</u>
Study Lead - NYISO		9	\$ 56,011.18	\$ 26,148.57	\$ 40,287.86	\$60,000
Study Lead - Developer		8	\$ 48,032.55	\$ 6,689.15	\$ 18,419.96	\$30,000
Overall		17	\$ 56,011.18	\$ 6,689.15	\$ 29,997.08	
System Reliability Impact Studies						
				Year	NYISO+TO	
	<u>Project</u>	<u>MW Range</u>	<u>Lead Party</u>	<u>Completed</u>	<u>Total Cost</u>	
	B01	101 - 200	NYISO	2009	\$ 83,606.47	
	B02	> 200	NYISO	2008	\$135,606.84	
	B03	21 - 100	NYISO	2008	\$ 87,652.59	
	B04	21 - 100	NYISO	2008	\$113,864.16	
	B05	21 - 100	Developer	2008	\$ 20,621.70	
	B06	21 - 100	Developer	2008	\$ 34,377.66	
	B07	> 200	Developer	2008	\$104,331.46	
	B08	21 - 100	Developer	2009	\$ 48,360.24	
	B09	> 200	Developer	2008	\$ 28,209.47	
	B10	101 - 200	Developer	2009	\$ 24,787.63	
	B11	101 - 200	Developer	2008	\$ 36,594.40	
	B12	21 - 100	Developer	2008	\$ 16,739.15	
	B13	21 - 100	Developer	2008	\$ 17,499.13	
	B14	> 200	Developer	2008	\$ 30,108.63	
	B15	21 - 100	Developer	2008	\$ 24,749.37	
	B16	21 - 100	Developer	2008	\$ 30,743.13	
	B17	> 200	Developer	2009	\$ 25,250.50	
	B18	101 - 200	Developer	2009	\$ 11,872.16	
	B19	> 200	Developer	2009	\$ 25,836.64	
	B20	> 200	Developer	2009	\$ 25,335.50	
					\$926,146.83	
Statistics:						
		<u># of Studies</u>	<u>Highest Cost</u>	<u>Lowest Cost</u>	<u>Average Cost</u>	<u>Proposed Deposit(s)</u>
Study Lead - NYISO		4	\$ 135,606.84	\$ 83,606.47	\$105,182.52	\$120,000
Study Lead - Developer		16	\$ 104,331.46	\$ 11,872.16	\$ 31,588.55	\$40,000
Overall		20	\$ 135,606.84	\$ 11,872.16	\$ 46,307.34	

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document on the official service list compiled by the Secretary in this proceeding. I have also electronically served the foregoing on all market participants, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania.

Dated at Washington, DC, this 26th day of January 2010.

/s/ Vanessa A. Colón
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500