

HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

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

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

FILE NO: 55430.000072

February 18, 2010

BY HAND DELIVERY

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington D.C. 20426

Re: New York Independent System Operator, Inc., Compliance Filing, Docket No. ER09-1142-___

Dear Ms. Bose:

Pursuant to the Federal Energy Regulatory Commission's ("Commission") November 20, 2009 Order in the above captioned proceeding ("November 2009 Order"),¹ the New York Independent System Operator, Inc. ("NYISO") respectfully submits this compliance filing. This filing includes proposed compliance revisions to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") to satisfy the November 2009 Order's directives with respect to market monitoring.

Consistent with the Commission's February 18, 2010 notice in this proceeding, the NYISO will file its compliance filing responding to the Commission's directives that it: (i) provide additional information demonstrating the reasonableness of its rules requiring demand response resources to use the same telemetry and communications equipment as generators; and (ii) provide a plan of action for permitting demand response resource participation in its real-time energy market on February 25, 2010.²

¹ *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,164 (2009) ("November 2009 Order").

² *See New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. ER09-1142-000 (issued February 18, 2010).

Ms. Kimberly D. Bose
February 18, 2010
Page 2

I. Communications

Communications and correspondence regarding this filing should be directed to:

Robert E. Fernandez, General Counsel
Elaine D. Robinson, Director of Regulatory Affairs
*Alex M. Schnell
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, N.Y. 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
erobinson@nyiso.com
aschnell@nyiso.com

*Ted J. Murphy
Vanessa A. Colón
Hunton & Williams, LLP
1900 K Street, N.W.
Suite 1200
Washington, D.C. 20006
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com
vcolon@hunton.com

*Persons designated to receive service

II. Documents Submitted

The NYISO submits the following documents:

1. This filing letter;
2. Clean Services Tariff sheets incorporating the proposed revisions (“Attachment I”); and
3. Blacklined Services Tariff sheets incorporating the proposed revisions (“Attachment II”).

III. Background

A. Order No. 719

Order No. 719 amended the Commission’s regulations in the areas of demand response, long-term power contracting, market monitoring, and ISO/RTO responsiveness.³ Order No. 719 also required ISOs/RTOs to consult with stakeholders and submit compliance

³ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64100 (Oct. 28, 2008), FERC Stats. & Regs. § 31,281 (2008) (Order No. 719), *order on reh’g*, 74 Fed. Reg. 37,772 (July 29, 2009), 128 FERC ¶ 61,059 (2009) (Order No. 719-A).

filings to implement the proposed reforms. Order No. 719 directed ISOs/RTOs to modify their tariffs to comply with certain market monitoring requirements, including a requirement that market monitoring units (“MMUs”) performing certain “Core Functions” (including: (1) identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the ISO/RTO, the Commission, and other interested entities; and (3) notifying appropriate Commission staff of instances in which a market participant’s behavior may require investigation). Order No. 719 also directed RTOs/ISOs to consolidate all MMU provisions into one section of the tariff, include rules on information dissemination and ethics standards, and increase stakeholder access to ISO/RTO Boards of Directors.

B. The NYISO’s Order No. 719 Compliance Filing

The NYISO submitted its compliance filing in response to Order No. 719 on May 15, 2009 (“May 2009 Filing”). The May 2009 Filing proposed several revisions to the NYISO Services Tariff and OATT in response to Order No. 719’s market monitoring and bid disclosure directives. Specifically, the NYISO consolidated its MMU provisions into its Market Monitoring Plan in Attachment O of the Services Tariff. Consistent with the requirements of Order No. 719, the Market Monitoring Plan incorporated all responsibilities or duties that are assigned to the MMU. The tariff revisions also clarified that the provisions of the Market Monitoring Plan are controlling with regard to the MMU, its responsibilities, and its authority. Consistent with the November 2009 Order and the Commission’s December 28, 2009 Order approving a January 1, 2010 effective date for the tariff revisions,⁴ Potomac Economics became the NYISO’s MMU on the first of this year. Potomac Economics is currently responsible for performing the Order No. 719 “Core Functions,” and continues to report to the non-management members of the NYISO’s Board of Directors (“Board”). The NYISO’s internal Market Monitoring and Performance Department has been renamed the Market Mitigation and Analysis Department (“MMA”) and its duties have changed consistent with the NYISO’s Market Monitoring Plan.

C. November 20 Order

On November 20, 2009, the Commission issued an order accepting the NYISO’s proposed tariff revisions, subject to a further compliance filing. With respect to the market monitoring directives, the Commission accepted most of the NYISO’s revisions, but required the NYISO to: (1) remove tariff provisions that would have exempted certain categories of matters from automatic MMU referral, while allowing the NYISO to propose new language

⁴ *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,271 at P 5 (2009).

identifying specific tariff provisions that would qualify for such an exemption; (2) clarify that the MMU is responsible for performing daily monitoring and for analyzing market outcomes to the extent necessary to report on wholesale market performance; (3) clarify whether the MMU is responsible for monitoring virtual bidding; (4) clarify that the NYISO is responsible for handling purely administrative matters; (5) clarify that the MMU reports on market design flaws and market violations will be made to the Commission; (6) include a requirement that the MMU be available for regular conference calls with the Commission and state commission staff, RTO/ISO representatives and market participants; (7) revise the tariff to clarify that the MMU must respond to tailored requests for information it receives from state commissions and to information and data requests that the MMU receives from the Commission⁵; and (8) revise the tariff to allow market participants to provide context to confidential data related to them which is being released in response to a “tailored” request for information from a state commission, as long as no undue delay results.

IV. Proposed Tariff Revisions to the Market Monitoring Plan

A. MMU Referrals and Performance of Core Functions

1. Referral of Market Violations to the Commission

Order No. 719 adopted protocols for referrals by MMUs to the Commission of all suspected Market Violations and perceived Market Design Flaws and directed that conforming tariff language be included in ISO/RTO tariffs.⁶ The NYISO complied with these requirements but also included additional language to clarify that the MMU need not refer routine tariff violations that the NYISO itself was authorized to address under its tariff and handled in its regular course of business. Specifically, the NYISO modified Section 4.5.3.1 to provide that the MMU would not refer to the Commission matters regarding violations that: (1) are expressly set forth in the tariffs; (2) involve objectively identifiable behavior; and (3) subjects the Market Party to a sanction or other consequences that are expressly set forth in the tariff.

⁵ The NYISO has requested clarification, or rehearing, of the November 2009 Order to the extent it would require the MMU to respond to *any* request by the Commission to the NYISO, even when a Commission request is issued to the NYISO. See *New York Independent System Operator, Inc.*, Request for Clarification or in the Alternative Rehearing, Docket No. ER09-1142-004 (filed December 18, 2009). The NYISO’s request is still pending before the Commission and the NYISO’s submission of this filing is not intended to constitute a withdrawal or waiver.

⁶ *Id.* at P 84, citing 18 C.F.R. § 35.28(g)(iv) and (v).

The November 2009 Order agreed in principle that “traffic ticket” type violations could be excluded from the MMU referral requirement, but found that such violations must be specifically identified in the Market Monitoring Plan.⁷ The November 2009 Order further stated that items included on this list should have the following attributes: (1) the activity must be expressly set forth in the tariff; (2) the activity must involve objectively identifiable behavior; and (3) the activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.⁸

In compliance with this directive, the NYISO has removed the language that it originally proposed to include in Section 4.5.3.1 of the Market Monitoring Plan and replaced it with the following list of specific “traffic ticket” items in Section 4.5.3.2:

- (1) failure to meet a deadline, or to take any other action, required of Developers under Attachments S, X, or Z to the ISO OATT that subjects a Developer to a possible loss of queue position;
- (2) failure to meet a Contract or Non-Contract CRIS MW Commitment pursuant to Sections VII.K.1.a and VII.K.1.b of Attachment S to the ISO OATT that results in a charge or other a sanction under Section VII.K.1c of Attachment S of the ISO OATT;
- (3) failure to provide wind forecasting information that results in a sanction under Section 5.8a of the ISO Services Tariff;
- (4) failure to provide Installed Capacity related information or operating data under Articles 5.12.1, 5.12.3, or 5.12.5 of the ISO Services Tariff that triggers sanctions under Article 5.12.12 of the ISO Services Tariff;
- (5) failure to comply with the scheduling, bidding, and notification requirements under Articles 5.12.1 or 5.12.7 of the ISO Services Tariff that trigger sanctions under Article 5.12.12 of the ISO Services Tariff;
- (6) other actions or failures to act that trigger sanctions under Article 5.12.12 of the ISO Services Tariff, including, but not limited to, failures by:
 - (i) Installed Capacity Suppliers of Unforced Capacity from External System Resources located in an External Control Area or from a Control Area System Resource that has agreed not to Curtail the

⁷ *Id.* at PP 98-99.

⁸ *Id.* at P 98.

Energy associated with Installed Capacity, or afford the same Curtailment priority that it affords its own Control Area Load to; (a) provide Installed Capacity related information required for certification as an Installed Capacity Resource as established in the ISO Procedures; and (b) comply with scheduling, bidding, or notification requirements for certification as an Installed Capacity Supplier established in the ISO Procedures.

- (ii) Transmission Owners to provide information required by Article 5.11.3 of the ISO Services Tariff;
- (7) shortfalls by Installed Capacity Suppliers and External Installed Capacity Suppliers that trigger sanctions under Article 5.14.2 of the ISO Services Tariff;
- (8) Voltage Support Service performance that results in the imposition of charges under Rate Schedule 2 to the ISO Services Tariff;
- (9) Regulation Service performance that results in the imposition of penalties under Section 8.0 of Rate Schedule 3 to the ISO Services Tariff (in the event that such penalties are re-instituted by the ISO);
- (10) Performance that results in the imposition of Persistent Undergeneration charges under Rate Schedule 3-A to the ISO Services Tariff;
- (11) Black Start performance that results in reduction or forfeitures of payments under Rate Schedule 5 to the ISO Services Tariff;
- (12) conduct that results in a sanction under Section 4.3 of the Market Mitigation Measures, including, but not limited to: (i) where a Market Party, or its Affiliate, engages in physical withholding, including providing the ISO false information regarding the derating or outage of an electric facility; (ii) where a Market Party, or its Affiliate, fails to follow the ISOs dispatch instructions in real-time, resulting in a different output level than expected had the dispatch instruction been followed, where such conduct has caused a material increase in one or more prices or guarantee payments in an ISO administered market; (iii) where a Market Party makes unjustifiable changes to one or more operating parameters of a Generator that reduce its ability to provide Energy or Ancillary Services; and (iv) a Load Serving Entity that has been subjected to a "Load Bid Measure" Penalty Level payment in accordance with Section 4.4 of the Market Mitigation Measures;

- (13) conduct that results in the ISO's use of the "Load Bid Measure" set forth in Section 4.4 of the Market Mitigation Measures;
- (14) actions or failures to act by Installed Capacity Suppliers and Responsible Interface Parties that trigger sanctions under Section 4.5(d), (f), or (g) of the Market Mitigation Measures;
- (15) any failure by the ISO to meet the deadlines for completing System Impact Studies, or any failure by a Transmission Owner to meet the deadlines for completing Facilities Studies, under Sections 19 and 32 of the ISO OATT that results in the filing of a notice and/or the imposition of sanctions under those provisions;
- (16) failure of a Market Party to comply with the ISO's creditworthiness requirements for customers, including, but not limited to, failure to: (i) comply with a demand for additional credit support; (ii) cure a default in another independent system operator/regional transmission organization market; (iii) prepay for charges in accordance with the terms of a prepayment agreement; (iv) comply with the ISO's creditworthiness reporting requirements; and (v) provide sufficient credit support to cover bid submissions.

The November 2009 Order directed the NYISO to "clearly set forth in its filing how any particular provision meets the necessary criteria."⁹ The NYISO submits that each item on this list involves a clearly defined behavior that is tied to a specific sanction or consequence that is set forth in a specified provision of the NYISO's tariffs that was previously accepted for filing by the Commission, as explained below:

- 1. Developer requirements under Attachments S, X and Z of the NYISO OATT:**
If a Developer fails to meet specific deadlines, provide required information or take required action with respect to executing or requesting the filing of an unexecuted Interconnection Agreement, the Developer loses its queue position or the NYISO determines that the Developer's Interconnection Request has been withdrawn.
- 2. Contract or Non-Contract Commitments under Attachment S of the NYISO OATT:** If an entity making a Contract or Non-Contract Commitment, fails to certify or offer the full number of Contract CRIS MW or Non-Contract CRIS MW, it is subject to sanctions of up to 1.5 times the Installed Capacity Spot Auction

⁹ *Id.* at P 99.

Market Clearing Price for the month in which either the capacity under the Non-Contract Commitment was not offered or the Contract Commitment to supply ICAP was not certified, times the number of MW committed but not offered and termination of external CRIS Rights.

3. **Intermittent Power Resource (“IPR”) requirements to provide wind forecasting information under Section 5.8a of the Services Tariff:** If an IPR does not provide the NYISO with wind speed and wind direction data as required, the IPR is subject to daily sanctions the greater of \$500 or \$20/MW of nameplate capacity until such failure is cured.
4. **Requirements to provide ICAP related information or operating data under Articles 5.12.1, 5.12.3 or 5.12.5 of the Services Tariff:** In the event an ICAP Supplier does not provide information (*e.g.*, Operational Data, proposed outage schedules, name and location of generators, DMNC test results, GADS Data, data equivalent to GADS Data, CARL Data, outage data), in the form and manner requested or required by the ISO in accordance with the Services Tariff and ISO Procedures, the NYISO may impose daily sanctions on the ICAP Supplier, depending on the violated provisions and the duration of the violation, up to the higher of \$1000 or \$10 per MW of Installed Capacity that the resource is capable of providing. The Services Tariff, however, also provides the NYISO with flexibility “[u]pon a showing of extraordinary circumstances, the ISO retains the discretion to accept at any time Operating Data which have not been submitted in a timely manner, or which do not fully conform with the ISO Procedures.”¹⁰ If the ICAP Supplier refuses a forced rescheduling of its outage, the ISO may prevent it from supplying UCAP.
5. **ICAP Supplier failure to comply with scheduling, bidding and notification requirements under Article 5.12.1 or 5.12.7 of the Services Tariff:**
 - In the event an ICAP Supplier does not comply with scheduling, bidding, or notification requirements, the ICAP Supplier is subject to sanctions of up to the product of a deficiency charge, pro-rated on a daily basis, and the maximum number of MWs that the ICAP Supplier failed to schedule or Bid in any hour in that day.
 - In the event an ICAP Supplier does not comply with the scheduling, bidding, or notification requirements for certified UCAP, the ICAP supplier is subject to sanctions of equal to the product number of MWs the

¹⁰ Services Tariff Section 5.12.12(a).

ICAP Supplier failed to schedule during that hour and the corresponding real-time LBMP at the applicable Proxy Generator Bus.

6. Other actions or failures to act that trigger sanctions under Article 5.12.12 of the Services Tariff:

- If a Transmission Owner fails to provide information on aggregated LSE loads with required documentation (as required by Services Tariff Article 5.11.3), the NYISO may impose sanctions of up to \$10,000 per day that the required information is late.
- If an ICAP Supplier of Unforced Capacity from External System Resources located in an External Control Area or a Control Area that has agreed to the curtailment provisions fails to provide required certification information or to comply with scheduling, bidding, or notification requirements, the NYISO may impose sanctions of up to, depending on the violated provisions and the duration of the violation, the higher of \$1000 or \$10 per MW of Installed Capacity that the resource is capable of providing and also the product of a deficiency charge, pro-rated on a daily basis, and the maximum number of MWs that the ICAP Supplier failed to schedule or Bid in any hour in that day.

7. ICAP Supplier and External ICAP Supplier Shortfalls that trigger sanctions under Article 5.14.2 of the Services Tariff:

- If an ICAP Supplier sells more UCAP than it is qualified to sell and it does not purchase in the Monthly Auction, or certify bilateral transaction, in the amount of the shortfall, it is subject to deficiency charges for the amount of UCAP the NYISO purchased to cover the shortfall, and sanctions including suspension of privileges to sell or purchase Unforced Capacity in NYISO administered ICAP auctions or to submit Bilateral Transactions to the NYISO.
- If an External ICAP Supplier fails to deliver to the NYCA the Energy associated with Unforced Capacity it committed to the NYCA it is subject to a deficiency charge equal to one and one-half times the applicable Market-Clearing Price of Unforced Capacity determined in the ICAP Spot Market Auction for the applicable month, prorated for the number of hours in the month that the External ICAP Supplier is deemed to have a shortfall. As an ICAP Supplier, the External ICAP Supplier is also subject to sanctions including suspension of ICAP privileges.

8. **Voltage Support Service performance that results in the imposition of charges under Article 2 to the ISO Services Tariff:** If a Resource or Non-Generator Voltage Support Resource does not provide voltage support per the Rate Schedule 2 requirements, it is subject to sanctions of up to 1/4th of the annual payment or an amount equal to three months voltage support payments made to it and may lose its eligibility for Voltage Support Service Payments.
9. **Regulation Service performance that results in the imposition of penalties under Section 8.0 of Rate Schedule 3 to the ISO Services Tariff (in the event that such penalties are re-instituted by the ISO):** Where degradation in performance threatens compliance with NERC and NPCC standards, Good Utility Practice for Control Performance, area control error, disturbance control standards, reserve pickup performance and system security, Suppliers may be required to pay a performance charge.
10. **Performance that results in the imposition of Persistent Undergeneration charges under Rate Schedule 3-A to the ISO Services Tariff:** Suppliers not providing Regulation Service that persistently operate at a level below their schedule are subject to a persistent undergeneration charge calculated as the Energy Difference times the market clearing price (\$/MW) that applies to the dispatch interval for the Regulation Service in the real-time market or day-ahead market, times the length of the interval divided by 60 minutes.
11. **Black Start performance that results in reduction or forfeitures of payments under Rate Schedule 5 to the ISO Services Tariff:** If a Generator fails a Black Start System Restoration Services capability test, it is subject to a *pro rata* reduction in its annual payments based on the elapsed time between the unsuccessful test and a subsequent successful test.
12. **Market Party, or Affiliate, conduct which subjects it to sanction under Section 4.3 of the Market Mitigation Measures:**
 - A Market Party is subject to sanctions of a Base Penalty Amount times an appropriate multiplier, where the Market Party, or its Affiliate: (1) engages in physical withholding, including providing the ISO false information regarding the derating or outage of an electric facility; (2) fails to follow the ISOs dispatch instructions in real-time, resulting in a different output level than expected had the dispatch instruction been followed, where such conduct has caused a material increase in one or more prices or guarantee payments in an ISO administered market.

- A Market Party is subject to sanctions of a Base Penalty Amount times an appropriate multiplier, where the Market Party makes unjustifiable changes to one or more operating parameters to a Generator that reduce its ability to provide Energy or Ancillary Services.
- A Load Serving Entity is subject to sanctions of a Base Penalty Amount times an appropriate multiplier, where the Load Serving Entity has been subjected to a “Load Bid Measure” Penalty Level payment in accordance with Section 4.4 of the Market Mitigation Measures.

13. Use of the “Load Bid Measure” in Section 4.4 of the Market Mitigation

Measures: An LSE is required to purchase or schedule all of its expected power requirements in the day-ahead market, where the ISO determines that: (1) the relationship between zonal LBMPs in a zone in the day-ahead market and the Real-Time market is not what would be expected under workable competition conditions; (2) one or more LSE’s have been meeting in a substantial portion of the loads with purchases in the Real-Time market; and (3) the practice has contributed to unwarranted divergence of LBMP between the two markets.

14. ICAP Supplier and Responsible Interface Party (“RIP”) actions or failures to act that trigger sanctions under Section 4.5(d), (f), or (g) of the Market Mitigation Measures:

- If an ICAP Supplier fails to offer or sell Mitigated UCAP which contributes to an increase in UCAP prices in New York City of 15% or more (and the increase is at least \$2.00/kilowatt-month), the ICAP Supplier is subject to sanctions of 1.5 times the lesser of the difference between the average Market-Clearing price for New York City in the relevant ICAP Spot Market Auction or the difference between the average price and the clearing price in the External Reconfiguration Market for the relevant period.
- If a Market Participant is found to have physically withheld by retiring or otherwise removing an ICAP Supplier or de-rating the amount of capacity from a Supplier, and the action would increase the Market Clearing Prices in one or more ICAP Spot Market Auctions for New York City by 5% or more (and the increase is at least \$.50/kilowatt-month), the Market Participant is subject to sanctions of 1.5 times the market clearing price in the relevant ICAP Sport Market Auction for each month during which such capacity was withheld, times the total of the number of MWs withheld in each month and all other MWs of ICAP in New York city under common Control with such withheld megawatts.

- If a Responsible Interface Party, together with its Affiliated Entities, submits an offer below the Offer Floor, which causes or contributes to a decrease in UCAP prices in New York City of 5% or more (and the decrease is at least \$.50/kilowatt-month), sanctions are 1.5 times the difference between the Market-Clearing Price for New York City in the relevant ICAP Spot Auction, times the total amount of UCAP sold by the RIP and its Affiliated Entities in the relevant ICAP Spot Auction.

15. NYISO or Transmission Owner failures to meet deadlines under OATT Sections 19 and 32:

- If the NYISO does not meet the Section 19, or Section 32, deadlines for completion of System Impact Studies it is subject to sanctions of up to \$500 per day.
- If a Transmission Owner does not meet the Section 19, or Section 32, deadlines for completion of Facilities Studies it is subject to sanctions of up to \$500 per day.

16. Market Party failures to comply with NYISO creditworthiness requirements:

If a Market Party fails to comply with NYISO creditworthiness requirements in the Services Tariff and OATT, the NYISO will have the right to: (1) suspend or terminate a customer upon an event of default; (2) issue an interim invoice and require payment within 2 days from a customer in “financial distress” and/or require the customer to prepay estimated charges; (3) demand immediate payment from a customer that fails to cure its default in another ISO/RTO, and/or require the customer to prepay estimated charges, and/or reduce or eliminate the customers unsecured credit; and (4) require prepayment and/or reduce or eliminate unsecured credit if a customer pays its invoice late on two occasions in 12 months.

Although the tariff provisions in question generally do not explicitly include language specifying that aggrieved entities ultimately possess a “right of appeal” to the Commission, any entity that is sanctioned by the NYISO pursuant to the provisions listed above possesses that right, after satisfying any prerequisite requirements in the NYISO’s tariffs. Any entity aggrieved by a NYISO action, including the imposition of a sanction explicitly authorized by the tariffs, can always exercise its statutory right to file a complaint with the Commission, appealing the NYISO’s decision. In addition, the aggrieved entities may avail themselves of

the dispute resolution provisions of the NYISO's tariffs, which likewise preserve their rights to raise issues with the Commission.¹¹

As the NYISO specifies in its proposed tariff language, the MMU will retain the discretion to refer activities that it is not *required* to refer to the Commission. Hence, the proposed tariff provisions will not limit or hinder the MMU from making the referrals to the Commission called for in Order No. 719.

The NYISO has not listed actions or failures to act that do not constitute Market Violations, even though the underlying behavior may be sub-optimal. Examples include: (a) the submission of a Bid that fails both the conduct and impact tests, and is mitigated; (b) the failure of an External Transaction that results in the assessment of a Financial Impact Charge by the NYISO in accordance with Sections 4.5(C)(2) and 4.5(D)(2) of the Services Tariff; (c) failing to conform to a day-ahead schedule in a manner that triggers real-time balancing charges under Article 4.5 of the ISO Services Tariff (or the related provisions of Rate Schedules 3 and 4 thereto, and Rate Schedule 4 to the OATT); (d) making a settlement calculation related error governed by Article 7 of the Services Tariff or Section 7 of the OATT that is corrected within the time frames provided therein; (e) miscalculating a price or charge subject to possible reservation and correction under Attachment E to the ISO Services Tariff or Attachment Q to the OATT and correcting such price or charge within the time frames provided therein. The foregoing matters do not involve tariff violations and, as such, are not Market Violations that the MMU is expected to refer to the Commission.

Finally, the NYISO proposes to add language to Section 4.5.3.2 to clarify that potential Market Violations that constitute "Market Problems" that the NYISO has already reported to the MMU and the Commission's Office of Enforcement need not also be referred by the MMU.¹² Consistent with proposed Section 3.5.1 of the Services Tariff, which has been submitted to the Commission for its consideration in Docket No. ER10-65,¹³ the NYISO is required to report potential Market Problems it discovers to both the Commission's Office of

¹¹ See, e.g., OATT Article 12 and Section 12.5 (stating that "[n]othing in this Section shall restrict the rights of any party to file a complaint, rate or tariff or other contract change with the Commission under the relevant provisions of the FPA.").

¹² The Commission has previously accepted clarifying tariff revisions that were necessary to implement approved compliance filing language. See, e.g., *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh'g*, 127 FERC ¶ 61,042 (2009); *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,318 at P 27 (2009).

¹³ See *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Establishing Procedures for Stakeholder Involvement in the Analysis of Errors and Development of Corrective Action, Docket No. ER10-65-000 (filed October 14, 2009).

Enforcement and to the MMU. The MMU will then have the opportunity to submit an additional report to the extent the MMU determines that additional reporting is necessary. However, there is little to be gained by mandating that the MMU submit a referral on issues that the NYISO has already reported to the Commission. The NYISO believes its proposed clarification is appropriate because it addresses changes to the NYISO tariffs that have been proposed in response to a Commission Order that was issued after the NYISO submitted its May 2009 Filing.

2. Daily Monitoring, Analysis of Market Outcomes, and Monitoring of Virtual Bidding

The May 2009 Filing proposed modifications to the tariff regarding the MMU's responsibilities under the Core Functions and the monitoring of virtual bidding. In the November 2009 Order the Commission directed the NYISO to clarify the MMU's responsibilities, to specify that it would be responsible for performing daily monitoring and analyzing market outcomes.¹⁴ The November 2009 Order also directed the NYISO to clarify whether the MMU is responsible for monitoring virtual bidding.¹⁵ The NYISO therefore proposes to modify the Market Monitoring Plan to provide that the MMU will perform daily monitoring and analyze market outcomes and will also be responsible for monitoring virtual bidding. This proposal would be reflected in a new Section 4.5.2.1, which would state:

In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.

The subsequent Sections have been renumbered accordingly.

B. Other Modifications to the Market Monitoring Plan

1. MMA Responsibility for Purely Administrative Matters

The November 2009 Order accepted the NYISO's proposed tariff modifications defining the duties and responsibilities of the MMU and the MMA, but directed the NYISO to clarify that the NYISO would handle purely administrative matters that were remote from the Core Functions to be performed by the MMU.¹⁶ The NYISO, therefore, proposes the

¹⁴ November 2009 Order at P 100.

¹⁵ *Id.* at P 101.

¹⁶ *Id.* at P 115

following modification to Section 4.4 of its Market Monitoring Plan to clarify that the MMU will not be involved in purely administrative matters that are remote from its Core Functions.

The Market Monitoring Unit shall not participate in the administration of the ISO's Tariffs, except for performing its duties under this Plan. The Market Monitoring Unit shall not be responsible for performing purely administrative duties, such as enforcement of late fees or Market Party reporting obligations, that are not specified in this Plan.

2. Mission Statement

Order No. 719 directed ISOs/RTOs to place all of their MMU provisions in one location in their tariffs and to include a mission statement specifying the MMU's goals. In its May 2009 Filing the NYISO proposed to include such mission statement in the introduction to the Market Monitoring Plan. The November 2009 Order accepted the proposed MMU mission statement, but directed the NYISO to clarify to whom reports on market design flaws and market violations must be made.¹⁷ Therefore, the NYISO proposes to amend Section 4.1 as follows:

The Market Monitoring Unit's goals are (1) to ensure that the markets administered by the ISO function efficiently and appropriately, and (2) to protect both consumers and participants in the markets administered by the ISO by identifying and reporting Market Violations, market design flaws and market power abuses to the Commission in accordance with Sections 4.5.3 and 4.5.4 below.

3. Enhanced Information Dissemination

The November 2009 Order directed the NYISO to include a requirement that the MMU be available for regular conference calls with the Commission and state commission staff, ISO/RTO representatives and market participants.¹⁸ In compliance with the November 2009 Order, the NYISO proposes a new Section 10.4 which provides that:

The Market Monitoring Unit shall participate in regular conference calls for the presentation of market data and analyses of the type regularly gathered and prepared by the Market Monitoring Unit under this Plan, subject to limitations

¹⁷ *Id.* at P 125.

¹⁸ *Id.* at P 132.

on dissemination of Protected Information. Market Participants, staff of the Commission and the New York Public Service Commission, and representatives of the ISO may attend such conference calls.

4. Tailored Requests for Information

The November 2009 Order accepted the NYISO's proposed compliance tariff provisions stating that the MMU would collect and maintain information necessary for implementing the Market Monitoring Plan and provide information to market participants, state commissions or government agencies. The November 2009 Order also found, however, the NYISO must revise its tariff to specify that the MMU would be the entity to respond to information and data requests that it receives from the Commission.¹⁹ The NYISO therefore proposes to add a new Section 6.5.6 stating that:

The Market Monitoring Unit shall respond to information and data requests issued to it by the Commission or its staff. If the Commission or its staff, during the course of an investigation or otherwise, requests Protected Information from the Market Monitoring Unit that is otherwise required to be maintained in confidence, the Market Monitoring Unit shall provide the requested information to the Commission or its staff within the time provided for in the request for information. In providing the information to the FERC or its staff, the Market Monitoring Unit shall, consistent with any FERC rules or regulations that may provide for privileged treatment of that information, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Market Monitoring Unit shall not be held liable for any losses, consequential or otherwise, resulting from the Market Monitoring Unit divulging such Protected Information pursuant to a request under this Section 6.5.6. After the Protected Information has been provided to the Commission or its staff, the Market Monitoring Unit shall immediately notify any affected Market Participant(s) when it becomes aware that a request for disclosure of such Protected Information has been received by the Commission or its staff, or a decision to disclose such Protected Information has been made by the Commission, at which time the Market Monitoring Unit and the affected Market Participant(s) may respond before such information would be made public, pursuant to the Commission's rules and regulations that may provide for privileged treatment of information provided to the Commission or its staff.

¹⁹ *Id.* at P 140.

The November 2009 Order also directed the NYISO to modify its proposed tariff revisions to provide that the MMU, not the NYISO, is responsible for responding to tailored requests for information from state commissions.²⁰ The NYISO is therefore adding a new Section 6.5.5 which provides as follows:

The New York Public Service Commission and any Other State Commission may make tailored requests to the Market Monitoring Unit for information related to general market trends and the performance of the New York Electric Markets. If the Market Monitoring Unit determines that such a request is not unduly burdensome, it shall provide the information sought, subject to the restrictions and limitations established in Sections 6.5.5.1, 6.5.5.2 and 6.5.5.4, below.

The NYISO is also making conforming revisions to Sections 6.5.4 and 6.5.5.1, 6.5.5.2, 6.5.5.4, and 6.5.5.5 to clarify that the MMU, not the NYISO, is responsible for responding to such requests. Section 6.5.5.3 has also been modified to indicate that Section 6.5.5 applies to requests by state commissions to the MMU and that Section 6.4 addresses how the MMU will respond to compulsory processes such as subpoenas and court orders.

The November 2009 Order also directed the NYISO to modify its tariff provisions addressing the MMU's responses to tailored requests for information to allow market participants to provide context to Confidential Information related to them which has been released in response to a "tailored" request, as long as no undue delay results.²¹ In compliance with the November 2009 Order, the NYISO proposes a new Section 6.5.5.2 which states that:

Prior to disclosing Protected Information pertaining to a particular Market Party in response to a tailored request made under Section 6.5.5, the Market Monitoring Unit shall (1) notify the Market Party or Parties to which the Protected Information pertains of the request and describe the information that the Market Monitoring Unit proposes to disclose, and (2) allow the Market Party or Parties a reasonable time to object to the disclosure and provide context to the Protected Information related to it. Providing the opportunity for Market Parties to object to disclosure or to provide context to the information being produced shall not be permitted to unduly delay its release.

²⁰ November 2009 Order at P 140.

²¹ *Id.* at P 142.

Ms. Kimberly D. Bose
February 18, 2010
Page 18

V. Proposed Effective Date

The NYISO respectfully requests that the Commission accept its proposed compliance tariff revisions to its Market Monitoring Plan with an effective date of January 1, 2010, the date that the other tariff provisions accepted by the November 2009 Order went into effect.

VI. Service

The NYISO will electronically 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 electric utility regulatory agency of New Jersey. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

VII. 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 that are set forth in Attachments I and II to this filing letter, with a January 1, 2010 effective date.

Respectfully Submitted,

Ted J. Murphy
Counsel to the
New York Independent System Operator, Inc.

Attachment I

violations of the Market Mitigation Measures, (2) assisting the ISO's efforts to accurately and effectively implement the requirements of its Tariffs and its intended market design, (3) responding to information and data requests the ISO receives from the FERC's Office of Enforcement staff and from the staff of the New York Department of Public Service consistent with the provisions of this Plan, the ISO's Code of Conduct, and any other provisions of the ISO's Tariffs that address the protection of Protected Information, (4) providing data and other assistance to support the Market Monitoring Unit, (5) working collaboratively with other ISO departments to analyze market outcomes, and (6) bringing to the Market Monitoring Unit's attention market-related concerns (including, but not limited to, possible Market Violations) it identifies while carrying out its responsibilities.

3.4 Accountability

The MMA shall act at the direction of the Chief Executive Officer, who shall be accountable for the ISO's implementation of this Plan.

The Chief Executive Officer shall ensure that the MMA has adequate employees, funding and other resources, access to required information, and the cooperation of the ISO staff, as necessary for it to perform its duties under this Plan and under the ISO's Market Mitigation Measures.

4. MARKET MONITORING UNIT

4.1 Mission of the Market Monitoring Unit

The Market Monitoring Unit's goals are (1) to ensure that the markets administered by the ISO function efficiently and appropriately, and (2) to protect both consumers and participants in the markets administered by the ISO by identifying and reporting Market Violations, market design flaws and market power abuses to the Commission in accordance with Sections 4.5.3 and 4.5.4 below.

4.2 Retention and Oversight of the Market Monitoring Unit

The Board shall retain a consulting or other professional services firm, or other similar entity, to advise it on the matters encompassed by this Plan and to carry out the responsibilities that are assigned to the Market Monitoring Unit in this Plan. The Market Monitoring Unit selected by the Board shall have experience and expertise appropriate to the analysis of competitive conditions in markets for electric capacity, energy and ancillary services, and financial instruments such as TCCs, and to such other responsibilities as are assigned to the Market Monitoring Unit under this Plan, and must also have sufficient resources and personnel to be able to perform the Core Functions and other assigned functions.

The Market Monitoring Unit shall not participate in the administration of the ISO's Tariffs, except for performing its duties under this Plan. The Market Monitoring Unit shall not be responsible for performing purely administrative duties, such as enforcement of late fees or Market Party reporting obligations, that are not specified in this Plan. The Market Monitoring Unit may (i) provide, or assist the ISO's efforts to develop, the inputs required to conduct mitigation, and (ii) assist the ISO's efforts to conduct "retrospective" mitigation (*see* Order 719 at PP. 369, 375) that does not change bids or offers (including physical bid or offer parameters) at or before the time such bids or offers (including physical bid or offer parameters) are considered in the ISO's market solution.

4.5 Core Market Monitoring Functions

The Market Monitoring Unit shall be responsible for performing the following Core Functions:

4.5.1 Evaluate existing and proposed market rules, tariff provisions and market design elements and recommend proposed rule and tariff changes to the ISO, to the Commission's Office of Energy Market Regulation staff, and to other interested entities, including the New York Public Service Commission, and participants in the ISO's stakeholder governance process. Provided that:

4.5.1.1 The Market Monitoring Unit is not responsible for systematic review of every tariff and market rule; its role is monitoring, not audit.

4.5.1.2 The Market Monitoring Unit is not to effectuate its proposed market design itself.

4.5.1.3 The Market Monitoring Unit's role in recommending proposed rule and Tariff changes is advisory in nature, unless a Tariff provision specifically concerns actions to be undertaken by the Market Monitoring Unit itself.

4.5.1.4 The Market Monitoring Unit must limit distribution of issues or concerns it identifies, and its recommendations to the ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation. Limited distributions should include an explanation of why further dissemination should be avoided at that time.

4.5.2 Review and report on the performance of the wholesale markets to the ISO, the Commission, and other interested entities such as the New York Public Service Commission and participants in its stakeholder governance process on at least a quarterly basis, and issue a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.

4.5.2.1 In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.

4.5.2.2 The Market Monitoring Unit shall submit drafts of each of its reports to the ISO for review and comment sufficiently in advance of the report's issuance to provide an effective opportunity for review and comment by the ISO. The Market Monitoring Unit may disregard any suggestions with which it disagrees. The ISO may not alter the reports prepared by the Market Monitoring Unit, nor dictate the Market Monitoring Unit's conclusions.

4.5.3 Identify and notify the Commission staff of instances in which a Market Party's or the ISO's behavior may require investigation, including, but not limited to, suspected Market Violations.

4.5.3.1 Except as provided in Section 4.5.3.2 below, in compliance with Section 35.28(g)(3)(iv) of the Commission's regulations (or any successor provisions thereto) the Market Monitoring Unit shall submit a non-public referral to the Commission in all instances where it has obtained sufficient credible information to believe a Market Violation has occurred. Once the Market Monitoring Unit has obtained sufficient credible information to warrant referral to the Commission, the Market Monitoring Unit shall immediately refer the matter to the Commission and desist from further investigation of/independent action related to the alleged Market Violation, except at the express direction of the Commission or Commission staff. The Market Monitoring Unit may continue to monitor for repeated instances of the reported activity by the same or other entities and shall respond to requests from the Commission for additional information in connection with the alleged Market Violation it has referred.

4.5.3.2 The Market Monitoring Unit is not required to refer the actions (or failures to act) listed in this Section 4.5.3.2 to the Commission as Market Violations, because they have: (i) already been reported by the ISO as a Market Problem under Article 3.5.1 of the ISO Services Tariff; and/or (ii) because they pertain to actions or failures that: (a) are expressly set forth in the ISO's Tariffs; (b) involve objectively

identifiable behavior; and (c) trigger a sanction or other consequence that is expressly set forth in the ISO Tariffs and that is ultimately appealable to the Commission. The actions (or failures to act) that are exempt from mandatory referral to the Commission are:

- (1) failure to meet a deadline, or to take any other action, required of Developers under Attachments S, X, or Z to the ISO OATT that subjects a Developer to a possible loss of queue position;
- (2) failure to meet a Contract or Non-Contract CRIS MW Commitment pursuant to Sections VII.K.1.a and VII.K.1.b of Attachment S to the ISO OATT that results in a charge or other a sanction under Section VII.K.1c of Attachment S of the ISO OATT;
- (3) failure to provide wind forecasting information that results in a sanction under Section 5.8a of the ISO Services Tariff;

- (4) failure to provide Installed Capacity related information or operating data under Articles 5.12.1, 5.12.3, or 5.12.5 of the ISO Services Tariff that triggers sanctions under Article 5.12.12 of the ISO Services Tariff;
- (5) failure to comply with the scheduling, bidding, and notification requirements under Articles 5.12.1 or 5.12.7 of the ISO Services Tariff that trigger sanctions under Article 5.12.12 of the ISO Services Tariff;
- (6) other actions or failures to act that trigger sanctions under Article 5.12.12 of the ISO Services Tariff, including, but not limited to, failures by:
 - (i) Installed Capacity Suppliers of Unforced Capacity from External System Resources located in an External Control Area or from a Control Area System Resource that has agreed not to Curtail the Energy associated with Installed Capacity, or afford the same Curtailment priority that it affords its own Control Area Load to:
 - (a) provide Installed Capacity related information required for certification as an Installed Capacity Resource as established in the ISO Procedures; and (b) comply with scheduling, bidding, or notification requirements for certification as an Installed Capacity Supplier established in the ISO Procedures.
 - (ii) Transmission Owners to provide information required by Article 5.11.3 of the ISO Services Tariff;

- (7) shortfalls by Installed Capacity Suppliers and External Installed Capacity Suppliers that trigger sanctions under Article 5.14.2 of the ISO Services Tariff;
- (8) Voltage Support Service performance that results in the imposition of charges under Rate Schedule 2 to the ISO Services Tariff;
- (9) Regulation Service performance that results in the imposition of penalties under Section 8.0 of Rate Schedule 3 to the ISO Services Tariff (in the event that such penalties are re-instituted by the ISO);
- (10) performance that results in the imposition of Persistent Undergeneration charges under Rate Schedule 3-A to the ISO Services Tariff;
- (11) Black Start performance that results in reduction or forfeitures of payments under Rate Schedule 5 to the ISO Services Tariff;
- (12) conduct that results in a sanction under Section 4.3 of the Market Mitigation Measures, including, but not limited to: (i) where a Market Party, or its Affiliate, engages in physical withholding, including providing the ISO false information regarding the derating or outage of an electric facility; (ii) where a Market Party, or its Affiliate, fails to follow the ISOs dispatch instructions in real-time, resulting in a different output level than

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 (2009).

expected had the dispatch instruction been followed, where such conduct has caused a material increase in one or more prices or guarantee payments in an ISO administered market; (iii) where a Market Party makes unjustifiable changes to one or more operating parameters of a Generator that reduce its ability to provide Energy or Ancillary Services; and

(iv) a Load Serving Entity that has been subjected to a “Load Bid Measure” Penalty Level payment in accordance with Section 4.4 of the Market Mitigation Measures;

(13) conduct that results in the ISO’s use of the “Load Bid Measure” set forth in Section 4.4 of the Market Mitigation Measures;

(14) actions or failures to act by Installed Capacity Suppliers and Responsible Interface Parties that trigger sanctions under Section 4.5(d), (f), or (g) of the Market Mitigation Measures;

(15) any failure by the ISO to meet the deadlines for completing System Impact Studies, or any failure by a Transmission Owner to meet the deadlines for completing Facilities Studies, under Sections 19 and 32 of the ISO OATT that results in the filing of a notice and/or the imposition of sanctions under those provisions;

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 (2009).

- (16) failure of a Market Party to comply with the ISO's creditworthiness requirements for customers, including, but not limited to, failure to:
- (i) comply with a demand for additional credit support, (ii) cure a default in another independent system operator/regional transmission organization market; (iii) prepay for charges in accordance with the terms of a prepayment agreement; (iv) comply with the ISO's creditworthiness reporting requirements; and (v) provide sufficient credit support to cover bid submissions.

To the extent the above list enumerates specific Tariff provisions, the exclusions specified above shall also apply to re-numbered and/or successor provisions thereto. The Market Monitoring Unit is not precluded from referring any of the activities listed above to the Commission.

or other non-confidential compilations, versions or reports of Protected Information as may be useful for the competitive or efficient functioning of any of the New York Electric Markets. Any such proposed methods for creating non-confidential reports of such information shall only be adopted after provision of a reasonable opportunity for, and consideration of, the comments of Market Parties and other interested parties. All such proposed or adopted methods shall be set forth in the ISO Procedures, shall be made available through the ISO web site or comparable means, and shall be subject to review and approval by the Board.

6.5.3 Consistent with the foregoing requirements, the ISO and its Market Monitoring Unit shall make available, through the ISO web site or comparable means, such reports on the New York Electric Markets as they determine will, at reasonable cost, facilitate competition in those markets.

6.5.4 Any data or other information collected by the ISO relating to any of the New York Electric Markets shall be provided upon request, and without undue discrimination between requests, to a Market Party, other interested party, or an Interested Government Agency, provided: (i) such data or information is not Protected Information, or the party designating it as Protected Information has consented in writing to its disclosure; (ii) such information can be provided without undue burden or disruption to, or interference with the other duties and responsibilities of the

ISO; and (iii) the requesting party, if other than an Interested Government Agency, provides appropriate guarantees of reimbursement of the costs to the ISO of compiling and disclosing the data or information. If the ISO determines that doing so would not be unduly burdensome or expensive, or inconsistent with maintaining the competitiveness or economic efficiency of any market, the ISO shall make data or information provided in accordance with this paragraph available to interested parties through the ISO web site or other appropriate means.

6.5.5 The New York Public Service Commission and any Other State Commission may make tailored requests to the Market Monitoring Unit for information related to general market trends and the performance of the New York Electric Markets. If the Market Monitoring Unit determines that such a request is not unduly burdensome, it shall provide the information sought, subject to the restrictions and limitations established in Sections 6.5.5.1, 6.5.5.2 and 6.5.5.4, below.

6.5.5.1 Until such time as the ISO is able to develop with its stakeholders and FERC accepts appropriate confidentiality protections (*See* Order 719 at PP. 448, 459), the Market Monitoring Unit shall not provide Protected Information in response to a request under this Section 6.5.5 of the Plan, except where the party designating the requested information as Protected Information has consented in writing to its disclosure.

6.5.5.2 Prior to disclosing Protected Information pertaining to a particular Market Party in response to a tailored request made under Section 6.5.5, the Market Monitoring Unit shall (1) notify the Market Party or Parties to which the Protected Information pertains of the request and describe the information that the Market Monitoring Unit proposes to disclose, and (2) allow the Market Party or Parties a reasonable time to object to the disclosure and to provide context to the Protected Information related to it. Providing the opportunity for Market Parties to object to disclosure, or to provide context to the information being produced shall not be permitted to unduly delay its release.

6.5.5.3 Section 6.5.5 of the Plan pertains to requests by the New York Public Service Commission and Other State Commissions to the Market Monitoring Unit to provide information. Section 6.4 of the Plan addresses how the Market Monitoring Unit responds to compulsory processes, such as subpoenas and court orders.

6.5.5.4 In responding to a request under Section 6.5.5 of the Plan, the Market Monitoring Unit shall not knowingly provide information to the New York Public Service Commission, or to an Other State Commission, that is designed to aid a state enforcement action.

6.5.5.5 The New York Public Service Commission or any Other State Commission may petition FERC to require the ISO to release information that the Market Monitoring Unit is not required to release, or that the Market Monitoring Unit is proscribed from releasing, under this Section 6.5.5 of the Plan.

6.5.6 The Market Monitoring Unit shall respond to information and data requests issued to it by the Commission or its staff. If the Commission or its staff, during the course of an investigation or otherwise, requests Protected Information from the Market Monitoring Unit that is otherwise required to be maintained in confidence, the Market Monitoring Unit shall provide the requested information to the Commission or its staff within the time provided for in the request for information. In providing the information to the FERC or its staff, the Market Monitoring Unit shall, consistent with any FERC rules or regulations that may provide for privileged treatment of that information, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Market Monitoring Unit shall not be held liable for any losses,

consequential or otherwise, resulting from the Market Monitoring Unit divulging such Protected Information pursuant to a request under this Section 6.5.6. After the Protected Information has been provided to the Commission or its staff, the Market Monitoring Unit shall immediately notify any affected Market Participant(s) when it becomes aware that a request for disclosure of such Protected Information has been received by the Commission or its staff, or a decision to disclose such Protected Information has been made by the Commission, at which time the Market Monitoring Unit and the affected Market Participant(s) may respond before such information would be made public, pursuant to the Commission's rules and regulations that may provide for privileged treatment of information provided to the Commission or its staff.

6.6 Sharing Information With PJM Interconnection LLC to Comply with FERC Opinion No. 476

6.6.1 Subject to the requirements of Section 6.6.2, the ISO and the Market Monitoring Unit may release Protected Information of Public Service Electric & Gas Company ("PSE&G"), Consolidated Edison Company of New York ("ConEd"), and their affiliates, and the Protected Information of any Market Participant regarding generation and/or transmission facilities located within the ConEd Transmission District (*see* Section 2.184 of the ISO's Open Access Transmission Tariff) to PJM Interconnection LLC ("PJM") and the PJM Market Monitoring Unit ("PJM Market Monitor") to the limited extent that the ISO or the ISO's Market Monitoring

10.3 Report on Virtual Bid and Offer Market Design and Rules

The Market Monitoring Unit shall monitor and assess the impact of virtual bids and offers on the competitive structure and performance of, and the economic efficiency of, the ISO Administered Markets. Such monitoring and assessment shall include the effects, if any, of virtual bids and offers on any automated mitigation procedures, or any mitigation measures specified in Section 5 of the Market Mitigation Measures. An assessment of the market impacts of virtual bids and offers shall be included in the annual report required by Section 10.1, above, and in a quarterly report when the Market Monitoring Unit deems appropriate.

10.4 Conference Calls

The Market Monitoring Unit shall participate in regular conference calls for the presentation of market data and analyses of the type regularly gathered and prepared by the Market Monitoring Unit under this Plan, subject to limitations on dissemination of Protected Information. Market Participants, staff of the Commission and the New York Public Service Commission, and representatives of the ISO may attend such conference calls.

10.5 Other Reports or Filings

The Market Monitoring Unit, with the assistance of the MMA, where appropriate, shall prepare such other periodic or other reports on any matters within their purview as the Market Monitoring Unit determines are necessary, or as may be requested by the Board, the Chief Executive Officer or any of the Interested Government Agencies. Unless the Board or the Interested Government Agency requesting such report specifies to the contrary, copies of such reports shall be made publicly available by the Board, subject to redaction or other measures necessary for the protection of Protected Information. All reasonable fees and expenses for the

Attachment II

violations of the Market Mitigation Measures, (2) assisting the ISO's efforts to accurately and effectively implement the requirements of its Tariffs and its intended market design,

(3) responding to information and data requests [the ISO receives](#) from the FERC's Office of Enforcement staff and from the staff of the New York Department of Public Service consistent with the provisions of this Plan, the ISO's Code of Conduct, and any other provisions of the ISO's Tariffs that address the protection of Protected Information, (4) providing data and other assistance to support the Market Monitoring Unit, (5) working collaboratively with other ISO departments to analyze market outcomes, and (6) bringing to the Market Monitoring Unit's attention market-related concerns (including, but not limited to, possible Market Violations) it identifies while carrying out its responsibilities.

3.4 Accountability

The MMA shall act at the direction of the Chief Executive Officer, who shall be accountable for the ISO's implementation of this Plan.

The Chief Executive Officer shall ensure that the MMA has adequate employees, funding and other resources, access to required information, and the cooperation of the ISO staff, as necessary for it to perform its duties under this Plan and under the ISO's Market Mitigation Measures.

Issued by: Stephen G. Whitley, President
Issued on: ~~May 15, 2009~~ [February 18, 2010](#)

Effective: [January 1, 2010](#)

~~Filed to comply with Order No. 719 of the Federal Energy Regulatory Commission, Docket Nos. RM07-19-000 and AD07-7-000, issued October 17, 2008, 125 FERC ¶ 61,071 (2008).~~ [Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)

4. MARKET MONITORING UNIT

4.1 Mission of the Market Monitoring Unit

The Market Monitoring Unit's goals are (1) to ensure that the markets administered by the ISO function efficiently and appropriately, and (2) to protect both consumers and participants in the markets administered by the ISO by identifying and reporting Market Violations, market design flaws and market power abuses [to the Commission in accordance with Sections 4.5.3 and 4.5.4 below](#).

4.2 Retention and Oversight of the Market Monitoring Unit

The Board shall retain a consulting or other professional services firm, or other similar entity, to advise it on the matters encompassed by this Plan and to carry out the responsibilities that are assigned to the Market Monitoring Unit in this Plan. The Market Monitoring Unit selected by the Board shall have experience and expertise appropriate to the analysis of competitive conditions in markets for electric capacity, energy and ancillary services, and financial instruments such as TCCs, and to such other responsibilities as are assigned to the Market Monitoring Unit under this Plan, and must also have sufficient resources and personnel to be able to perform the Core Functions and other assigned functions.

Issued by: Stephen G. Whitley, President
Issued on: ~~May 15, 2009~~ [February 18, 2010](#)

Effective: [January 1, 2010](#)

~~Filed to comply with Order No. 719 of the Federal Energy Regulatory Commission, Docket Nos. RM07-19-000 and AD07-7-000, issued October 17, 2008, 125 FERC ¶ 61,071 (2008).~~ [Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)

The Market Monitoring Unit shall not participate in the administration of the ISO's Tariffs, except for performing its duties under this Plan. [The Market Monitoring Unit shall not be responsible for performing purely administrative duties, such as enforcement of late fees or Market Party reporting obligations, that are not specified in this Plan.](#) The Market Monitoring Unit may (i) provide, or assist the ISO's efforts to develop, the inputs required to conduct mitigation, and (ii) assist the ISO's efforts to conduct "retrospective" mitigation (*see* Order 719 at PP. 369, 375) that does not change bids or offers (including physical bid or offer parameters) at or before the time such bids or offers (including physical bid or offer parameters) are considered in the ISO's market solution.

4.5 Core Market Monitoring Functions

The Market Monitoring Unit shall be responsible for performing the following Core Functions:

4.5.1 Evaluate existing and proposed market rules, tariff provisions and market design elements and recommend proposed rule and tariff changes to the ISO, to the Commission's Office of Energy Market Regulation staff, and to other interested entities, including the New York Public Service Commission, and participants in the ISO's stakeholder governance process. Provided that:

4.5.1.1 The Market Monitoring Unit is not responsible for systematic review of every tariff and market rule; its role is monitoring, not audit.

4.5.1.2 The Market Monitoring Unit is not to effectuate its proposed market design itself.

4.5.1.3 The Market Monitoring Unit's role in recommending proposed rule and Tariff changes is advisory in nature, unless a Tariff provision specifically concerns actions to be undertaken by the Market Monitoring Unit itself.

4.5.1.4 The Market Monitoring Unit must limit distribution of issues or concerns it identifies, and its recommendations to the ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation. Limited distributions should include an explanation of why further dissemination should be avoided at that time.

4.5.2 Review and report on the performance of the wholesale markets to the ISO, the Commission, and other interested entities such as the New York Public Service Commission and participants in its stakeholder governance process on at least a quarterly basis, and issue a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.

[4.5.2.1 In order to perform the Core Functions, the Market Monitoring Unit shall perform daily monitoring of the markets that the ISO administers. The Market Monitoring Unit's daily monitoring shall include monitoring of virtual bidding.](#)

[Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)

4.5.2.12 The Market Monitoring Unit shall submit drafts of each of its reports to the ISO for review and comment sufficiently in advance of the report's issuance to provide an effective opportunity for review and comment by the ISO. The Market Monitoring Unit may disregard any suggestions with which it disagrees. The ISO may not alter the reports prepared by the Market Monitoring Unit, nor dictate the Market Monitoring Unit's conclusions.

4.5.3 Identify and notify the Commission staff of instances in which a Market Party's or the ISO's behavior may require investigation, including, but not limited to, suspected Market Violations.

4.5.3.1 [Except as provided in Section 4.5.3.2 below,](#) ~~in~~ compliance with Section 35.28(g)(3)(iv) of the Commission's regulations (or any successor provisions thereto) the Market Monitoring Unit shall submit a non-public referral to the Commission in all instances where it has obtained sufficient credible information to believe a Market Violation has occurred ~~unless the Market Violation involves a matter that (a) is expressly set forth in the ISO's Tariffs, (b) involves objectively identifiable behavior, and (c) subjects the Market Party to a sanction or other consequences that are expressly set forth in the ISO's Tariffs.~~ Once the Market Monitoring Unit has obtained sufficient credible information to warrant referral to the Commission, the Market Monitoring Unit shall immediately refer the matter to the Commission and desist from further investigation of/independent action related to the alleged Market Violation, except at the express direction of the Commission or Commission staff. The Market Monitoring Unit may continue to monitor for repeated instances of the reported activity by the same or other entities and shall respond to requests from the Commission for additional information in connection with the alleged Market Violation it has referred.

[4.5.3.2 The Market Monitoring Unit is not required to refer the actions \(or failures to act\) listed in this Section 4.5.3.2 to the Commission as Market Violations, because they have: \(i\) already been reported by the ISO as a Market Problem under Article 3.5.1 of the ISO Services Tariff; and/or \(ii\) because they pertain to actions or failures that: \(a\) are expressly set forth in the ISO's Tariffs; \(b\) involve objectively](#)

Issued by: Stephen G. Whitley, President

Effective: [January 1, 2010](#)

Issued on: ~~May 15, 2009~~ [February 18, 2010](#)

~~Filed to comply with Order No. 719 of the Federal Energy Regulatory Commission, Docket Nos. RM07-19-000 and AD07-7-000, issued October 17, 2008, 125 FERC ¶ 61,071 (2008).~~ [Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)

identifiable behavior; and (c) trigger a sanction or other consequence that is expressly set forth in the ISO Tariffs and that is ultimately appealable to the Commission. The actions (or failures to act) that are exempt from mandatory referral to the Commission are:

- (1) failure to meet a deadline, or to take any other action, required of Developers under Attachments S, X, or Z to the ISO OATT that subjects a Developer to a possible loss of queue position;
- (2) failure to meet a Contract or Non-Contract CRIS MW Commitment pursuant to Sections VII.K.1.a and VII.K.1.b of Attachment S to the ISO OATT that results in a charge or other a sanction under Section VII.K.1c of Attachment S of the ISO OATT;
- (3) failure to provide wind forecasting information that results in a sanction under Section 5.8a of the ISO Services Tariff;

(4) failure to provide Installed Capacity related information or operating data

under Articles 5.12.1, 5.12.3, or 5.12.5 of the ISO Services Tariff that

triggers sanctions under Article 5.12.12 of the ISO Services Tariff;

(5) failure to comply with the scheduling, bidding, and notification

requirements under Articles 5.12.1 or 5.12.7 of the ISO Services Tariff

that trigger sanctions under Article 5.12.12 of the ISO Services Tariff;

(6) other actions or failures to act that trigger sanctions under Article 5.12.12

of the ISO Services Tariff, including, but not limited to, failures by:

(i) Installed Capacity Suppliers of Unforced Capacity from External

System Resources located in an External Control Area or from a

Control Area System Resource that has agreed not to Curtail the

Energy associated with Installed Capacity, or afford the same

Curtailment priority that it affords its own Control Area Load to:

(a) provide Installed Capacity related information required for

certification as an Installed Capacity Resource as established in the

ISO Procedures; and (b) comply with scheduling, bidding, or

notification requirements for certification as an Installed Capacity

Supplier established in the ISO Procedures.

(ii) Transmission Owners to provide information required by Article

5.11.3 of the ISO Services Tariff;

- (7) shortfalls by Installed Capacity Suppliers and External Installed Capacity Suppliers that trigger sanctions under Article 5.14.2 of the ISO Services Tariff;
- (8) Voltage Support Service performance that results in the imposition of charges under Rate Schedule 2 to the ISO Services Tariff;
- (9) Regulation Service performance that results in the imposition of penalties under Section 8.0 of Rate Schedule 3 to the ISO Services Tariff (in the event that such penalties are re-instituted by the ISO);
- (10) performance that results in the imposition of Persistent Undergeneration charges under Rate Schedule 3-A to the ISO Services Tariff;
- (11) Black Start performance that results in reduction or forfeitures of payments under Rate Schedule 5 to the ISO Services Tariff;
- (12) conduct that results in a sanction under Section 4.3 of the Market Mitigation Measures, including, but not limited to: (i) where a Market Party, or its Affiliate, engages in physical withholding, including providing the ISO false information regarding the derating or outage of an electric facility; (ii) where a Market Party, or its Affiliate, fails to follow the ISOs dispatch instructions in real-time, resulting in a different output level than

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 (2009).

• expected had the dispatch instruction been followed, where such conduct has caused a material increase in one or more prices or guarantee payments in an ISO administered market; (iii) where a Market Party makes unjustifiable changes to one or more operating parameters of a Generator that reduce its ability to provide Energy or Ancillary Services; and

(iv) a Load Serving Entity that has been subjected to a “Load Bid Measure” Penalty Level payment in accordance with Section 4.4 of the Market Mitigation Measures;

(13) conduct that results in the ISO’s use of the “Load Bid Measure” set forth in Section 4.4 of the Market Mitigation Measures;

(14) actions or failures to act by Installed Capacity Suppliers and Responsible Interface Parties that trigger sanctions under Section 4.5(d), (f), or (g) of the Market Mitigation Measures;

(15) any failure by the ISO to meet the deadlines for completing System Impact Studies, or any failure by a Transmission Owner to meet the deadlines for completing Facilities Studies, under Sections 19 and 32 of the ISO OATT that results in the filing of a notice and/or the imposition of sanctions under those provisions;

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 (2009).

(16) failure of a Market Party to comply with the ISO's creditworthiness requirements for customers, including, but not limited to, failure to:
(i) comply with a demand for additional credit support, (ii) cure a default in another independent system operator/regional transmission organization market; (iii) prepay for charges in accordance with the terms of a prepayment agreement; (iv) comply with the ISO's creditworthiness reporting requirements; and (v) provide sufficient credit support to cover bid submissions.

To the extent the above list enumerates specific Tariff provisions, the exclusions specified above shall also apply to re-numbered and/or successor provisions thereto. The Market Monitoring Unit is not precluded from referring any of the activities listed above to the Commission.

or other non-confidential compilations, versions or reports of Protected Information as may be useful for the competitive or efficient functioning of any of the New York Electric Markets. Any such proposed methods for creating non-confidential reports of such information shall only be adopted after provision of a reasonable opportunity for, and consideration of, the comments of Market Parties and other interested parties. All such proposed or adopted methods shall be set forth in the ISO Procedures, shall be made available through the ISO web site or comparable means, and shall be subject to review and approval by the Board.

6.5.3 Consistent with the foregoing requirements, the ISO and its Market Monitoring Unit shall make available, through the ISO web site or comparable means, such reports on the New York Electric Markets as they determine will, at reasonable cost, facilitate competition in those markets.

6.5.4 Any data or other information collected by the ISO relating to ~~general market trends in, or the performance of~~ any of the New York Electric Markets shall be provided upon request, and without undue discrimination between requests, to a Market Party, other interested party, ~~Other State Commission,~~ or an Interested Government Agency, provided: (i) such data or information is not Protected Information, or the party designating it as Protected Information has consented in writing to its disclosure; (ii) such information can be provided without undue burden or disruption to, or interference with the other duties and responsibilities of the

Issued by: Stephen G. Whitley, President
Issued on: ~~May 15, 2009~~ [February 18, 2010](#)

Effective: [January 1, 2010](#)

~~Filed to comply with Order No. 719 of the Federal Energy Regulatory Commission, Docket Nos. RM07-19-000 and AD07-7-000, issued October 17, 2008, 125 FERC ¶ 61,071 (2008).~~ [Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)

ISO ~~or the Market Monitoring Unit~~; and (iii) the requesting party, if other than an Interested Government Agency, provides appropriate guarantees of reimbursement of the costs to the ISO of compiling and disclosing the data or information. If the ISO, ~~in consultation with the Market Monitoring Unit~~, determines that doing so would not be unduly burdensome or expensive, or inconsistent with maintaining the competitiveness or economic efficiency of any market, the ISO ~~or the Market Monitoring Unit~~ shall make data or information provided in accordance with this paragraph available to interested parties through the ISO web site or other appropriate means.

6.5.5 The New York Public Service Commission and any Other State Commission may make tailored requests to the Market Monitoring Unit for information related to general market trends and the performance of the New York Electric Markets. If the Market Monitoring Unit determines that such a request is not unduly burdensome, it shall provide the information sought, subject to the restrictions and limitations established in Sections 6.5.5.1, 6.5.5.2 and 6.5.5.4, below.

6.5.~~45~~.1 Until such time as the ISO is able to develop with its stakeholders and FERC accepts appropriate confidentiality protections (*See* Order 719 at PP. 448, 459), the ~~ISO and its~~ Market Monitoring Unit shall not provide Protected Information in response to a request under this Section 6.5.~~45~~ of the Plan, except where the party designating the requested information as Protected Information has consented in writing to its disclosure.

[Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)

6.5.5.2 Prior to disclosing Protected Information pertaining to a particular Market Party in response to a tailored request made under Section 6.5.5, the Market Monitoring Unit shall (1) notify the Market Party or Parties to which the Protected Information pertains of the request and describe the information that the Market Monitoring Unit proposes to disclose, and (2) allow the Market Party or Parties a reasonable time to object to the disclosure and to provide context to the Protected Information related to it. Providing the opportunity for Market Parties to object to disclosure, or to provide context to the information being produced shall not be permitted to unduly delay its release.

6.5.~~45.23~~ Section 6.5.~~45~~ of the Plan pertains to requests by the New York Public Service Commission and Other State Commissions to the ~~ISO or its~~ Market Monitoring Unit to provide information. ~~It does not address the ISO's obligation to provide Confidential Information to FERC and FERC staff under Section 4.0 of its Code of Conduct, nor does it~~ Section 6.4 of the Plan addresses es how the ~~ISO or its~~ Market Monitoring Unit responds to compulsory processes, such as subpoenas ~~or~~ and court orders.

6.5.~~45.34~~⁴⁵ In responding to a request under Section 6.5.⁴⁵ of the Plan, the ~~ISO~~
~~and its~~ Market Monitoring Unit shall not knowingly provide information to the New
York Public Service Commission, or to an Other State Commission, that is designed to
aid a state enforcement action.

6.5.~~45.45~~⁴⁵ The New York Public Service Commission or any Other State
Commission may petition FERC to require the ISO to release information that the
~~ISO~~ Market Monitoring Unit is not required to release, or that the ~~ISO~~ Market Monitoring
Unit is proscribed from releasing, under this Section 6.5.⁴⁵ of the Plan.

6.5.6 The Market Monitoring Unit shall respond to information and data requests
issued to it by the Commission or its staff. If the Commission or its staff, during the course of an
investigation or otherwise, requests Protected Information from the Market Monitoring Unit that
is otherwise required to be maintained in confidence, the Market Monitoring Unit shall provide
the requested information to the Commission or its staff within the time provided for in the
request for information. In providing the information to the FERC or its staff, the Market
Monitoring Unit shall, consistent with any FERC rules or regulations that may provide for
privileged treatment of that information, request that the information be treated as confidential
and non-public by the FERC and its staff and that the information be withheld from public
disclosure. The Market Monitoring Unit shall not be held liable for any losses.

Issued by: Stephen G. Whitley, President
Issued on: ~~May 15, 2009~~ February 18, 2010

Effective: January 1, 2010

~~Filed to comply with Order No. 719 of the Federal Energy Regulatory Commission, Docket Nos. RM07-19-000 and~~
~~AD07-7-000, issued October 17, 2008, 125 FERC ¶ 61,071 (2008).~~ Filed to comply with order of the Federal
Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164
(2009).

consequential or otherwise, resulting from the Market Monitoring Unit divulging such Protected Information pursuant to a request under this Section 6.5.6. After the Protected Information has been provided to the Commission or its staff, the Market Monitoring Unit shall immediately notify any affected Market Participant(s) when it becomes aware that a request for disclosure of such Protected Information has been received by the Commission or its staff, or a decision to disclose such Protected Information has been made by the Commission, at which time the Market Monitoring Unit and the affected Market Participant(s) may respond before such information would be made public, pursuant to the Commission's rules and regulations that may provide for privileged treatment of information provided to the Commission or its staff.

6.6 Sharing Information With PJM Interconnection LLC to Comply with FERC Opinion No. 476

6.6.1 Subject to the requirements of Section 6.6.2, the ISO and the Market Monitoring Unit may release Protected Information of Public Service Electric & Gas Company ("PSE&G"), Consolidated Edison Company of New York ("ConEd"), and their affiliates, and the Protected Information of any Market Participant regarding generation and/or transmission facilities located within the ConEd Transmission District (*see* Section 2.184 of the ISO's Open Access Transmission Tariff) to PJM Interconnection LLC ("PJM") and the PJM Market Monitoring Unit ("PJM Market Monitor") to the limited extent that the ISO or the ISO's Market Monitoring

10.3 Report on Virtual Bid and Offer Market Design and Rules

The Market Monitoring Unit shall monitor and assess the impact of virtual bids and offers on the competitive structure and performance of, and the economic efficiency of, the ISO Administered Markets. Such monitoring and assessment shall include the effects, if any, of virtual bids and offers on any automated mitigation procedures, or any mitigation measures specified in Section 5 of the Market Mitigation Measures. An assessment of the market impacts of virtual bids and offers shall be included in the annual report required by Section 10.1, above, and in a quarterly report when the Market Monitoring Unit deems appropriate.

10.4 Conference Calls

The Market Monitoring Unit shall participate in regular conference calls for the presentation of market data and analyses of the type regularly gathered and prepared by the Market Monitoring Unit under this Plan, subject to limitations on dissemination of Protected Information. Market Participants, staff of the Commission and the New York Public Service Commission, and representatives of the ISO may attend such conference calls.

Issued by: Stephen G. Whitley, President
Issued on: ~~May 15, 2009~~ [February 18, 2010](#)

Effective: [January 1, 2010](#)

~~Filed to comply with Order No. 719 of the Federal Energy Regulatory Commission, Docket Nos. RM07-19-000 and AD07-7-000, issued October 17, 2008, 125 FERC ¶ 61,071 (2008).~~ [Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)

10.45 Other Reports or Filings

The Market Monitoring Unit, with the assistance of the MMA, where appropriate, shall prepare such other periodic or other reports on any matters within their purview as the Market Monitoring Unit determines are necessary, or as may be requested by the Board, the Chief Executive Officer or any of the Interested Government Agencies. Unless the Board or the Interested Government Agency requesting such report specifies to the contrary, copies of such reports shall be made publicly available by the Board, subject to redaction or other measures necessary for the protection of Protected Information. All reasonable fees and expenses for the

[Issued by:](#) [Stephen G. Whitley, President](#)

[Effective:](#) [January 1, 2010](#)

[Issued on:](#) [February 18, 2010](#)

[Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER09-1142-000, issued November 20, 2009, 129 FERC ¶ 61,164 \(2009\).](#)