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Submitted Electronically

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

Re: New York Independent System Operator, Inc. Request for Authority to Apply a Market Power Mitigation Measure to Rest-of-State Generators Committed or Dispatched for Reliability, Docket No. ER10-____-000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ and consistent with paragraphs 66, 101 and 102 and ordering paragraph (C) of the Commission’s May 20, 2010 *Order on Proposed Application of Mitigation Measures and Compliance Filings* in Docket ER09-1682-000 *et al.* (“May 20 Order”),² the New York Independent System Operator, Inc. (“NYISO”) submits this *Request for Authority to Apply a Market Power Mitigation Measure to Rest-of-State Generators Committed or Dispatched for Reliability*. This filing proposes to apply a market power mitigation measure that is similar to the mitigation measure that was accepted by the Commission in the May 20 Order, but that will apply to all Rest-of-State (“ROS”)³ Generators that can exercise market power when they are committed or dispatched to maintain system reliability.⁴

¹16 U.S.C. § 824d.

²*N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,169 (2010).

³In this filing, the term Rest-of-State or ROS refers to Generators located outside a designated Constrained Area. “Constrained Area” is defined in Section 23.2.1 of Attachment H to the NYISO’s Market Administration and Control Area Services Tariff.

⁴Unless otherwise specified, capitalized terms have the meanings specified in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

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I. List of Documents Submitted with this Filing

1. This filing letter.
2. A clean version of proposed revisions the NYISO's Market Power Mitigation Measures ("MMM"). The MMM are set forth in Attachment H to the Services Tariff.
3. A blacklined version of the proposed revisions to the MMM.
4. A clean version of proposed revisions to the NYISO's Market Monitoring Plan. The Market Monitoring Plan is set forth in Attachment O to the Services Tariff.
5. A blacklined version of the proposed revisions to the Market Monitoring Plan.
6. The NYISO Board of Directors' Decision on Appeal of the Management Committee's May 28, 2010 Decision Adopting Mitigation Measures that will Apply to Rest-Of-State Generators that are Committed for Reliability (July 29, 2010).
7. The Dissenting Opinion of Thomas F. Ryan on Appeal of the Management Committee's May 28, 2010 Decision Adopting Mitigation Measures that will Apply to Rest-Of-State Generators that are Committed for Reliability (July 29, 2010).

II. Copies of Correspondence

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III. Background

The Commission's May 20 Order accepted as just and reasonable a market power mitigation measure proposed by the NYISO that applies to three identified ROS Generators that can exercise market power when they are needed for system or local reliability. The measure mitigates those Generators' guarantee payments; that is, "the payments that generators receive as revenue from NYISO when they are dispatched out of economic merit order for reliability purposes."⁵

In paragraph 73 of the May 20 Order, the Commission noted that "in a competitive market, a generator lacking market power would be expected to submit bids into the NYISO spot market at a level that, if accepted at that bid price, would be expected to cover the generator's marginal costs."⁶ The Commission also explained that "the ability to include and recover costs in excess of marginal cost, including fixed costs, in bids during periods when the generators are required to run for reliability is evidence of market power."⁷ The mitigation measure for the three generators is based on thresholds that would be triggered by bidding in a manner that is not consistent with the principles articulated by the Commission. The May 20 Order found that the proposed mitigation measure is appropriate because "when a pivotal generator is required out-of-merit for reliability, there is no dispute that it possesses market power, and thus that mitigation may be required."⁸

In the May 20 Order, the Commission stated that: "We are concerned with the absence of a generally applicable mitigation measure to address the exercise of market power in those instances where a generator is the only solution to a reliability need."⁹ The Commission further stated its belief

that it may be appropriate for the NYISO to be authorized to immediately mitigate such conduct rather than having to not only investigate whether the conduct and impact thresholds of section 3.2.3 have been met on a case-by-case basis for

⁵May 20 Order at P2.

⁶*Id.* at P73.

⁷*Id.*

⁸*Id.* at P78.

⁹*Id.* at P101.

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specified individual generators but then delay mitigation by having to file a mitigation proposal under section 205.¹⁰

Thus, the Commission “encourage[d] NYISO’s efforts to develop a generally applicable version of Rate Schedule M-1 which would be applied to all market participants located outside of New York City . . . ,” and instructed the NYISO to either file a proposed, generally applicable mitigation measure, or to file a progress report on its efforts to develop such a measure, within 90 days.¹¹ This filing fulfills the Commission’s requirement.

Following the September 4, 2009 filing that resulted in the May 20 Order, the NYISO engaged in extensive stakeholder discussions to develop a mitigation measure targeted at ROS Generators that are committed for reliability, and that will apply at times when a single Supplier is pivotal to solving an identified reliability need. In order to address transparency concerns raised by the Generation Owners sector in the stakeholder process, the NYISO agreed to require a Transmission Owner that requests a local reliability commitment to identify the Suppliers that are capable of meeting the reliability need, or to inform the NYISO that the requested Supplier is the only one that can meet the reliability need. At the request of the Generation Owners sector, the NYISO also deleted language from its initial mitigation proposal specifying that a Generator would be subject to mitigation if it “was the only resource designated by a Transmission Owner to solve a local reliability need.” These changes clarify that a Supplier whose Generator is committed or dispatched for reliability will have access to information supporting the application of the mitigation measure proposed in this filing.

Also in response to a request from the Generation Owners sector, the NYISO developed a proposal for temporarily providing additional compensation to Generators that are not able to recover their going-forward costs in the NYISO’s markets.¹² While most stakeholders indicated that they were willing to participate in further discussions to determine if such a measure is needed and, if so, to develop a compensation mechanism, no stakeholder supported the NYISO’s proposed measure. Based on the comments it received (both in writing and at the stakeholder meetings), the NYISO determined that it would not be appropriate to delay the submission of this filing until an acceptable compensation mechanism (if needed) was developed. The NYISO

¹⁰*Id.*

¹¹*Id.* at P66; *see also* May 20 Order at PP101 and 102.

¹²See presentations by Dr. Nicole Bouchez, the manager of the NYISO’s Market Mitigation and Analysis Department, to the February 25, 2010, March 25, 2010 and April 19, 2010 Market Issues Working Groups. The stakeholder comments that the NYISO received are posted with the NYISO’s March 25, 2010 Market Issues Working Group meeting materials. These materials can be found on the NYISO’s website (www.nyiso.com).

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believes its decision is consistent with paragraphs 66, 101 and 102 of the May 20 Order, although the NYISO's decision was made before the May 20 Order was issued.

The improved mitigation measure proposed in this filing was approved for submission as a Section 205 filing by the Business Issues Committee on May 5, 2010, and by the Management Committee at its meeting on May 28. Both votes were contested, with all of the Generation Owners and many members of the Other Suppliers sector voting against the proposal.

Following the May 28 Management Committee meeting, the Independent Power Producers of New York and TC Ravenswood each appealed the Management Committee decision approving the tariff filing to the NYISO Board of Directors ("Board"). As discussed in greater detail in Section V of this filing letter, the Board denied the appeals and directed the NYISO to file the tariff revisions approved by the Management Committee. The Board also directed the NYISO to continue certain related efforts in the stakeholder process. A copy of the Board's decision is included with this filing, along with a copy of the dissenting opinion of Board member Thomas F. Ryan.

IV. Description of Proposed Mitigation Measure

The proposed mitigation measure for general applicability to ROS must-run units submitted with this filing is similar to the mitigation measure approved in the May 20 Order. The principle substantive provisions are set forth in proposed Sections 23.3.1.2.3 and 23.3.3.3.1.3 of the NYISO's MMM.

Consistent with the mitigation measure approved in the May 20 Order, the generally applicable measure applies only to exercises of market power by Generators that are committed "outside the ISO's economic evaluation process to protect NYCA or local area reliability" in the ROS area.¹³ Specifically, the measure applies to a Generator committed as a Day-Ahead Reliability Unit ("DARU") or via a Supplemental Resource Evaluation ("SRE"), or committed as a DARU or via SRE and subsequently dispatched Out-of-Merit above its minimum generation level to protect or maintain NYCA or local reliability.¹⁴ As with the mitigation measure that was accepted in the May 20 Order, the proposed generally applicable measure requires a determination that a Supplier is in a position to exercise market power by requiring that one of the following three conditions be met:

¹³ Attachment H § 23.3.1.2.3.

¹⁴ Attachment H § 23.3.1.2.3.1.

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- i. the Market Party (including its Affiliates) that owns or offers the Generator is the only Market Party that could effectively solve the reliability need for which the Generator was committed or dispatched, or
- ii. when evaluating an SRE that was issued to address a reliability need that multiple Market Parties' Generators are capable of solving, the NYISO only received bids from one Market Party (including its Affiliates), or
- iii. when evaluating a DARU, if the Market Party was notified of the need for the reliability of the of its Generator prior to the close of the Day-Ahead Market.¹⁵

If a Generator meets one or more of the above three conditions, the generally applicable measure specifies conduct thresholds for assessing the Generator's Bid parameters relative to the applicable reference level. Specifically, the thresholds would apply mitigation if a Bid or Bid component:

- i. exceeded the Generator's Minimum Generation Bid reference level by the greater of 10% or \$10/MWh, or
- ii. exceeded the Generator's Incremental Energy Bid reference level by the greater of 10% or \$10/MWh, or
- iii. exceeded the Generator's Start-Up Bid reference level by 10%, or
- iv. exceeded the Generator's minimum run time, start-up time, and minimum down time reference levels by more than one hour in aggregate, or
- v. exceeded the Generator's minimum generation MW reference level by more than 10%, or
- vi. decreased the Generator's maximum number of stops per day below the Generator's reference level by more than one stop per day, or to one stop per day.¹⁶

The thresholds are almost identical to those approved by the May 20 Order, but with the inclusion of a further threshold, in subsection (vi), to address the potential for the maximum number of stops per day specified in a Generator's Bid parameters to be manipulated to artificially increase its guarantee payment (by extending the required commitment period) if the Generator is in a position to exercise market power. In addition, the threshold in subsection (iv)

¹⁵ Attachment H § 23.3.1.2.3.2.

¹⁶ Attachment H § 23.3.1.2.3.3.

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would apply to start-up time and minimum down time in addition to minimum run time, for the same reason. Here, as with the mitigation measure approved in the May 20 Order, “imposing [guarantee payment] mitigation when the above conduct thresholds are exceeded will, effectively, recognize that conduct at or exceeding the threshold will always have a material impact.”¹⁷

In a Motion for Leave to Respond, and Response filed on October 13, 2009 in Docket No. ER09-1682, the docket for the May 20 Order, the NYISO notified the Commission of its agreement with the use of a modified version of the timeline specified in Section 23.3.3.1 of its MMM for consultation with any of the three specified Generators about possible legitimate justifications for Bids that exceed the applicable must-run mitigation conduct thresholds. In the May 20 Order, the Commission directed the NYISO to incorporate the mitigation measure for specific ROS must-run units, filed as Rate Schedule M-1, into Attachment H, and noted in a footnote that: “This will also facilitate NYISO’s use of other related Attachment H provisions such as the consultation timelines.”¹⁸ The NYISO made a filing to comply with this directive on August 6, 2010 that incorporated the agreed consultation timeline, and stating that the “NYISO and the three Generators that are presently subject to the mitigation measure have been using this consultation process and timeline to implement the Rate Schedule M-1 mitigation measure for nearly a year, and it has worked well from the NYISO’s perspective.”¹⁹ The current filing brings forward this consultation process for the generally applicable mitigation measure.²⁰ The experience with the three Generators that are subject to Rate Schedule M-1 indicates that this consultation process and timeline are appropriate for the generally applicable measure.

The remaining tariff revisions are conforming changes for the substantive provisions described above.²¹ In addition, a minor numbering change is also necessary in the Market Monitoring Plan, Attachment O to the Services Tariff, in order to incorporate the role of the Market Monitoring Unit (“MMU”) in the implementation of the foregoing consultation procedures. The procedures require the NYISO to submit its preliminary determination in response to a request for consultation from a Market Party to the MMU for review and comment,

¹⁷See May 20 Order at P13.

¹⁸May 20 Order at P99, n.94 (citing the NYISO’s Oct. 13, 2009 filing at 27).

¹⁹August 6, 2010 filing letter at 2.

²⁰See proposed revisions to § 23.3.3.3.1.3 of Attachment H.

²¹See, e.g., §§ 23.3.3.2.2, 23.3.3.3.1.1 and 23.3.3.3.1.2 (incorporating appropriate cross-references to make clear the applicability of the consultation procedures specified for different types of market power mitigation).

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and to consider the MMU's recommendations in reaching a final mitigation determination. These duties of the MMU are reflected in the proposed renumbering of the cross-references in Section 30.4.6.2.7 of Attachment O.

In sum, the proposed mitigation measure would identify any ROS Generator that has become a pivotal supplier as a result of being required for reliability, and thus possesses market power and should be subject to mitigation. Mitigation will only be applied if such a pivotal supplier engages in bidding conduct that is substantially inconsistent with competitive conduct, as measured by proposed thresholds that are consistent with those previously approved by the Commission. Any such Bids will necessarily have a significant impact on guarantee payments. Accordingly, the proposed measure should be accepted by the Commission for all the reasons articulated by the Commission in its May 20 Order.

V. NYISO Board Decision

As noted above, the Management Committee's approval of the tariff revisions submitted with this filing was appealed to the NYISO Board. In approving the submission of this filing, the Board directed the NYISO management to work with stakeholders in the governance process to examine claims by Generation Owners that existing cost recovery mechanisms do not provide an adequate opportunity for must-run units to recover their fixed costs.²² In doing so, the NYISO Board noted that the claims of deficient compensation had not been substantiated, and that the "Gap Solution" in Attachment Y to the NYISO's Open Access Transmission Tariff "contemplates that non-transmission Gap Solutions will receive 'full and prompt recovery of all reasonably-incurred costs . . . '."²³ Thus, while the Board found that a need to delay this filing has not been established, the Board took seriously the Generation Owners' concerns about the recovery of fixed costs by a Generator that must be run for system or local reliability. Consistent with the Board's directives, the NYISO's ongoing review of the existing Gap Solution process with its stakeholders will continue to be an important effort going forward.

The Board also directed the NYISO management to work with stakeholders in the governance process to "review the process by which permanent solutions to specific reliability needs are evaluated and planned for, particularly in terms of timing and cost to consumers."²⁴ The Board emphasized that: "Market signals which drive appropriate investments in generation,

²²Board Decision at 1.

²³Board Decision at 4.

²⁴Board Decision, at 1.

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transmission or demand response are the preferred outcome.”²⁵ The Board identified a set of objectives to be achieved by NYISO management through the stakeholder process:

1. exploration of methods of improving the transparency of costs that the NYISO incurs for the regular/repeated commitment of a generator for reliability; and
2. exploration of methods of developing a market-based signal that will more accurately reflect the alternative costs of addressing regularly recurring reliability needs than permitting a generator to exercise market power, or using a mitigated offer.

Consistent with the Board’s directives, NYISO staff will address these issues in their ongoing discussions with stakeholders.

VI. Requested Effective Date

The NYISO requests an effective date of October 12, 2010, that is, 60 days from the date of this filing.

VII. Intent to Request Permission to Withdraw Existing Must-Run Mitigation Measure

Once a generally applicable mitigation measure for ROS units committed or dispatched for reliability has been accepted by the Commission, the NYISO intends to seek permission to remove from the MMM the ROS must-run mitigation measure for three specified Generators. Those Generators will instead be subject to the generally applicable measure, rendering the generator-specific measure unnecessary.

VIII. Service

The NYISO will electronically send a 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. The filing will be posted on the NYISO’s website at www.nyiso.com. The NYISO will also make a paper copy available to any interested party that requests one. To the extent necessary, the NYISO requests waiver of the requirements of Section 35.2(d) of the Commission’s Regulations to permit it to provide service in this manner.²⁶

²⁵Board Decision at 4.

²⁶18 C.F.R. § 35.2(d).

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IX. Waiver of Cost of Service Filing Requirements

To the extent necessary, the NYISO respectfully requests that the Commission grant it waivers of the requirements of Section 35.12(b) of the Commission's regulations²⁷ addressing the filing of initial rate schedules and requiring the submission of certain cost-of-service information. The information required under Section 35.12(b) is not applicable to this filing, because it does not propose a traditional cost-of-service rate schedule. The NYISO also requests waiver, to the extent necessary, of any other Part 35 requirements that the Commission may deem to be applicable, but which are not addressed in this filing.²⁸

X. Conclusion

For the reasons explained in this filing letter, the NYISO respectfully requests that the Commission accept the market power mitigation measure for ROS Generators committed or dispatched for reliability submitted with this filing.

Respectfully submitted,

/s/ William F. Young
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²⁷18 C.F.R. § 35.12(b).

²⁸18 C.F.R. Part 35.