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April 2, 2012

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

**Re: Annual Compliance Report of the New York Independent System Operator, Inc.  
Regarding Unreserved Use and Late Study Penalties  
Docket No. OA12-\_\_\_\_\_**

Dear Ms. Bose:

Paragraph 472 of Order No. 890-A<sup>1</sup> requires that “each transmission provider ... report on its [unreserved use and late study] penalty assessments and distributions in an annual compliance report to be submitted on or before the deadline for submitting FERC Form-1, as established by the Federal Energy Regulatory Commission’s (“Commission’s”) Office of Enforcement each year.” Pursuant to that directive, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits its annual compliance report.<sup>2</sup>

## **I. Unreserved Use Penalties**

Unreserved use penalties are designed to address an issue that arises only under a physical reservation regime. The NYISO does not offer physical reservation based transmission service and the NYISO tariffs do not provide for the imposition of unreserved use penalties. Therefore, the NYISO neither imposed nor collected such penalties during the period since April 18, 2011.

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<sup>1</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats & Regs. ¶ 31,261 (2007).

<sup>2</sup> Order No. 890-A provides that the “annual compliance report should be filed under the same docket as the docket in which the proposed one-time compliance filing [establishing the transmission provider’s methodology for distributing penalty revenues] is submitted.” Order No. 890-A at P 472. Because that “one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties,” and because the NYISO has neither imposed unreserved use penalties, or been subject to late study penalties, it has not yet made such a filing. *Id.* Accordingly this compliance filing is being made in a new docket.

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## II. Late Study Penalties

In Order No. 890, the Commission adopted a rule requiring that “transmission providers ... submit a notification filing with the Commission in the event the transmission provider processes more than 20 percent of non-affiliates’ [system impact and facilities] studies outside of the 60-day due diligence deadlines in the pro forma OATT for two consecutive quarters.”<sup>3</sup> The Commission determined further that a “transmission provider ... will be subject to an operational penalty if the transmission provider continues to be out of compliance with the deadlines prescribed in the pro forma OATT for each of the two quarters following its notification filing and the Commission determines that no extenuating circumstances exist to excuse the transmission provider’s non-compliance.”<sup>4</sup>

As explained in prior reports, the Commission has accepted modifications to the NYISO OATT transmission study deadlines.<sup>5</sup> In the year since the NYISO’s last compliance report, the NYISO’s administration of transmission studies has not triggered the penalty or notification filing requirements under the NYISO OATT. Therefore, the NYISO has not been assessed any transmission study penalties in the past year.

If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Vanessa A. Colón

Vanessa A. Colón

Counsel to the

New York Independent System Operator, Inc.

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<sup>3</sup> Order No. 890 at P 1319.

<sup>4</sup> *Id.*

<sup>5</sup> See *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER08-1527-000 (November 4, 2008) (accepting the NYISO’s proposed modifications to its Open Access Transmission Tariff (“OATT”), effective September 13, 2008, which modified and extended the transmission study deadlines under the pro forma OATT).