

July 15, 2004

**BY HAND DELIVERY**

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

New York Independent System Operator, Inc.'s  
Filing of Revisions to the Independent System Operator Agreement

Dear Ms. Salas,

The New York Independent System Operator, Inc. ("NYISO"), at the direction of its Management Committee and Board of Directors ("Board"), hereby submits proposed revisions to the Commission-approved Independent System Operator Agreement ("*ISO Agreement*")<sup>1</sup> pursuant to Section 205 and 206 of the Federal Power Act ("FPA").<sup>2</sup> Section 19.03 of the *ISO Agreement* requires all proposed amendments to be filed with the Commission; Section 19.01 requires revisions to Section 7.04, as included in this filing, to be submitted to the Commission specifically under Section 206 of the FPA.

These amendments add Demand Response Providers ("DRPs") and Distributed Generators ("DGs") as voting members in NYISO's stakeholder governance process and reduce their required membership fee through 2006.

**I. Documents Submitted**

1. This letter;
2. Clean revised sheets from the *ISO Agreement* incorporating new provisions proposed by the NYISO ("Attachment I");
3. Redlined revised sheets from the *ISO Agreement* identifying the new provisions proposed by the NYISO ("Attachment II"); and,
4. A form of Federal Register Notice ("Attachment III").

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<sup>1</sup> Capitalized terms that are not otherwise defined herein shall have the meaning set forth in Article 1 of the Open Access Transmission Tariff ("OATT"), Article 1 of the Market Administration and Control Area Services Tariff ("Services Tariff"), or the *ISO Agreement*, including any definitions proposed to be added with this filing.

<sup>2</sup> 16 U.S.C. § 824e (2002).

## **II. Copies of Correspondence**

Communications regarding this proceeding should be addressed to:

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## **III. Description of the Proposal**

The *ISO Agreement*, one of the constituent agreements under which the NYISO was established, sets forth the structure and eligibility requirements for participation in NYISO governance. Stakeholders that meet the *ISO Agreement* requirements for participation in a sector or subsector become eligible to participate in stakeholder governance upon signing the *ISO Agreement* and paying a membership fee.<sup>3</sup>

The proposal approved by the Management Committee amends Articles I and VII of the *ISO Agreement* to explicitly allow DRPs and DGs to join the Other Suppliers sector. There are two exceptions to this rule for DGs. If the DG is owned by an End-Use Consumer or an Affiliate thereof, and the NYISO determines that the primary purpose of the DG is to supply electrical energy and capacity to that End-Use Consumer, then the DG Owner is to participate in the End-Use Consumers sector. If the DG is owned by an entity that is not an Affiliate of an End-Use Consumer, and the NYISO determines that the primary purpose of the DG is to sell electrical energy and capacity into the grid, then the DG Owner is to participate in the Generator Owners sector. In all other cases, DG entities are eligible to join the Other Suppliers sector.<sup>4</sup>

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<sup>3</sup> ISO Agreement § 2.02.

<sup>4</sup> DGs, other than those: i) owned by End-Use Consumers and principally supplying them with energy or capacity, or ii) owned by others and principally selling energy or capacity into the grid, are referred to in this filing as “Other Supplier DGs.”

The proposal directs the NYISO to use a four-part test to determine a DG's primary purpose: (1) the size of the DG relative to its host Load; (2) the intended use for which the DG was constructed; (3) the historical use of the DG; and (4) the location of the DG. In addition, if either the DG or DRP is an Affiliate of a Generator Owner or an End-Use Consumer, the ISO shall determine the most appropriate sector in which the entity is to vote.

The proposal also amends Article II of the *ISO Agreement* to reduce the membership fees for DRPs and DGs. DRPs with 40 MW or less of resources and DGs with 2 MW or less of resources would pay a fee of \$1,000 for 2004, \$2,000 for 2005, and \$3,000 for 2006. For 2007 and beyond, both DRPs and DGs would pay the normal fee assessed commercial participants in governance, *i.e.*, \$5,000.

#### **IV. Background**

After adverse FERC governance decisions and, ultimately, FERC/ISO-mediated settlement discussions, stakeholders developed a compromise governance structure that remains in place today. The compromise consists of the following basic elements, which apply to each of the NYISO's principal governance committees:

- Shared governance, pursuant to which the NYISO tariffs and certain sections of its constituent agreements can be revised pursuant to Section 205 of the Federal Power Act with the approval of the NYISO's Management Committee and its Board;
- A Management Committee comprised of five basic sector groups of roughly equal size; ostensibly populated by stakeholders with similar market interests and concerns;
- A "1/N" or "one person/one vote" voting scheme within the market participant sectors and within most of the sub-sectors;
- A 58% passage threshold for the Management Committee to propose tariff amendments to the Board and take other actions (a percentage that is intended to strike a balance between requiring a modicum of consensus for every change and setting the consensus requirement at an attainable level so that rule changes are not unduly difficult or impossible);
- An appeals process in which the Board serves as an internal arbiter of disputes over actions by the Management Committee with the power, where appropriate, to issue stays.

Despite what would appear to be a complex governance process, the NYISO has been remarkably successful at effecting necessary modifications and enhancements of the New York electricity markets. In fact, since its inception in December 1999 the NYISO has made over 100 filings pursuant to Section 205. The gridlock initially feared by many has not materialized.

## V. Discussion

DRPs and DGs represent an important and emerging market presence that needs to be effectively represented in the NYISO governance structure. The Management Committee's determination of the sectors in which DRPs and DGs should participate, and of the revised membership fee structure, is appropriate and reasonable. It is consistent with the existing governance structure and does not treat any market segment in an arbitrary or discriminatory manner. Neither does this proposal unreasonably reduce any market participant's opportunity to continue to participate effectively in the NYISO decision-making process nor expand any economic interest such that coalitions would no longer be necessary to achieve or block MC approval.<sup>5</sup>

Because DRPs and DGs fulfill functions similar to Other Suppliers in NYISO's markets (*i.e.*, they supply energy or capacity to load, and/or they modify the terms or conditions under which energy is supplied), it is appropriate to place most of these new participants in that sector. The proposed exceptions to this placement appropriately identify those DGs that may have an economic interest that is more closely aligned with end users or generation owners than with Other Suppliers. It is therefore appropriate to place DGs in the End Use Consumer or Generation Owners sectors as indicated.

Sectors may vote in load or supply blocs. The addition of new members to the Other Suppliers sector may affect the split in this sector's votes between these blocs. However, this sector includes members that both buy and sell energy and capacity at wholesale, and the vote in this sector routinely fluctuates between load and supply-favoring outcomes depending on sector membership and meeting attendance. It is entirely legitimate that the votes of these new participants will factor into the load versus supply balance in that sector.

Reducing the membership fee for these new market entrants is a workable means to ensure that the fee does not act as a financial barrier to participation. The reduced fees should not imbalance the stakeholder governance structure as a whole because the voting weight of the sectors that these new members are eligible to join will remain capped at the percentages in effect today. Gradually eliminating the fee over the next three years, as proposed, recognizes the market maturity that these entrants are likely to gain as they continue to participate in the New York energy and capacity markets.

The addition of DRPs and DGs, in the manner proposed, also furthers the efforts of the Commission to ensure that emerging market segments are adequately recognized and included in stakeholder governance structures.<sup>6</sup> Their participation will also help to ensure that NYISO's stakeholder governance structure does not discourage the implementation of new demand

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<sup>5</sup> See, *e.g.*, *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 42 (2004) (requiring SPP to amend its stakeholder committee to ensure that there was a "more balanced proportion of stakeholder representatives with no one sector having disproportionate control....")

<sup>6</sup> See, *e.g.*, *ISO New England, et al.*, 106 FERC 61,280 at P 54 (2004)

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management technologies and services in New York's electricity market, opportunities that are "one of the biggest potential outgrowths of the move towards a competitive market."<sup>7</sup>

The Board will continue to monitor the stakeholder governance structure to ensure that it continues to be fair, effective and has the ability to support workable competition, and it will closely examine any evidence presented for the appearance of bias or ineffectiveness. The Board has instructed NYISO staff to report at least annually on the effectiveness and fairness of the shared governance structure and to propose changes as necessary.

In addition, the Board and NYISO staff agreed in the *NYISO Strategic Plan for 2004 – 2008* to engage with Market Participants in periodic reviews of the governance process. Should it appear that changes may be warranted, the Board and Market Participants will consult, propose further action as necessary through the governance process, and pursue appropriate filings at FERC. The NYISO will also remain vigilant to be sure that a "tyranny of the majority" does not compromise the goals of fairness and independence of the organization.

## **VI. Stakeholder and Board Approval**

The Management Committee approved these amendments in two votes at its February 4, 2004 meeting. The first vote approved the amendments to Article I and VII of the *ISO Agreement* with 62.57% of the vote. The second vote approved the amendment to Article II (related to the reduced membership fee) by a vote of 67.75%.

Pursuant to Article V of the *ISO Agreement*, the Independent Power Producers of New York, Inc. ("IPPNY") filed a Notice of Appeal concerning this vote. Section 5.07 authorizes Parties to the *ISO Agreement* to appeal votes of the Management Committee to the Board. Nine parties filed Motions in Opposition. On March 2, 2004 the Management Committee defeated an alternative proposal to add DRPs and DGs as voting members in a new subsector in the Public Power and Environment sector. Under this alternative proposal, DRPs and DGs would have had a two percent (2%) voting opportunity derived by reducing all sector voting percentages equally. The Management Committee defeated this proposal with a vote of 37.27 % in favor. IPPNY also appealed this Management Committee action to the Board and five parties filed Motions in Opposition. The Board consolidated both appeals, heard oral argument on April 19, 2004, and denied both appeals in their entirety. A copy of the Board's decision is attached as an Appendix to the filing letter.

## **VII. Description of Proposed Changes to ISO Agreement**

The NYISO proposes to amend Section 7.04 of the *ISO Agreement*, which describes the sectors that comprise the Management, Operating and Business Issues Committees, to include language describing that, notwithstanding anything to the contrary in the *ISO Agreement*: (i) a DRP that is not a Transmission Owner shall be eligible to vote only in the Other Suppliers sector,

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<sup>7</sup> Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, Docket No. RM01-12-000, at P 561 (2002).

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and (ii) a DG may be eligible to vote in the Other Suppliers sector. The proposed new section continues to describe the circumstances under which DG owners would not participate in the Other Suppliers sector. If the DG is owned by an End-Use Consumer or its Affiliate, and the primary purpose of the DG is to supply electrical energy and capacity to that End-Use Consumer, then the DG Owner is to participate in the End-Use Consumers sector. If the DG is owned by an entity that is not an Affiliate of an End-Use Consumer, and the primary purpose of the DG is to sell electrical energy and capacity into the grid, then the DG Owner is to participate in the Generator Owners sector.

The proposed amendment also provides the following test for the NYISO to use in determining a DG's primary purpose. The ISO is to consider *inter alia*: (1) the size of the DG relative to its host Load; (2) the intended use for which the DG was constructed; (3) the historical use of the DG; and (4) the location of the DG.

In addition, the proposed amendment to Section 7.04 states that notwithstanding any other provision in the *ISO Agreement*, and subject to challenge, if either a DG Owner or a DRP is an Affiliate of either a Generator Owner or an End-Use Consumer, the ISO shall determine the most appropriate sector in which the entity shall vote.<sup>8</sup>

In addition, the NYISO proposes to amend Articles I and II of the *ISO Agreement* to: i) add definitions of the terms "Distributed Generator," "Distributed Generator Owner," "Demand Response Provider," and "Demand Side Resources;" ii) make conforming changes; and iii) revise the membership fee applicable to these new entrants.

The term "Distributed Generator" is proposed to be defined as:

A facility, existing or under construction, for the generation of electricity that is or will be connected at the distribution level, typically located on the End-Use Consumer's side of the consumption meter, and usually located at or near the intended place of use for at least some of the facility's output.

The term "Distributed Generator Owner" is proposed to be defined as:

An entity that owns, or leases with rights equivalent to ownership, a Distributed Generator.

The term "Demand Response Provider" is proposed to be defined as:

An entity that does not own Demand Side Resources but is qualified pursuant to ISO Procedures to submit aggregated bids for Demand Side Resources into ISO demand response programs (e.g., the Emergency Demand Response Program, Special Case Resource Program, Day-Ahead Demand Response Program.)

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<sup>8</sup> To be clear, each DRP and DG, and its affiliated entities, if any, is entitled only to one vote; the NYISO may simply determine in which sector that vote should reside.

The definition of the term “Demand Side Resources” is proposed as follows:

Resources located in the NYCA that are capable of reducing demand in a responsive, measurable and verifiable manner within time limits, and that are qualified to participate in competitive Energy markets pursuant to the ISO Tariffs and the ISO Procedures.

The proposal also makes conforming changes to the definitions of the terms “Generator” and “Installed Capacity” in order to exclude DGs and DRPs from the definition of the former and to indicate that DGs and DRPs are among the resources that may be capable of providing the latter. The NYISO also proposes to amend the term “Market Participant” to indicate that DGs and DRPs are included in the definition of that term and to change the numbering provisions of Article I to accommodate the addition of new definitions.

Finally, the NYISO proposes to amend Section 2.02 of the *ISO Agreement* to indicate that DRPs and DGs are eligible for reduced membership fees. DRPs with 40 MW or less of resources and DGs with 2 MW or less of resources are subject to an annual fee of \$1,000 for the year 2004, an annual fee of \$2,000 for the year 2005, an annual fee of \$3,000 for the year 2006 and an annual fee of \$5,000 for the year 2007 and for every year thereafter.

#### **VI. Section 206 Basis and Proposed Effective Date for Filing**

Section 19.01 of the *ISO Agreement* provides that proposed amendments to Section 7.04 of the *ISO Agreement*, among others, must be filed with the Commission pursuant to Section 206 of the FPA. Accordingly, although the Management Committee has approved of - and directed the NYISO to submit - these proposed revisions, the NYISO is proposing the amendment to Section 7.04 unilaterally.

The proposed revisions to Section 7.04 of the *ISO Agreement* contained in this filing reflect a majority decision of the Management Committee’s members and are supported by the Board. These revisions reflect the Management Committee’s desire to add these new participants to the governance structure without prejudicing the interests of any Party to the *ISO Agreement* or any other Market Participant.

The NYISO respectfully requests that the Commission approve the revisions to the *ISO Agreement* proposed in this filing as expeditiously as possible.

#### **VIII. Federal Register Notice**

A form of Federal Register Notice is provided as Attachment III hereto.

#### **IX. Service List**

Copies of this filing are being served on all signatories of the NYISO OATT and Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

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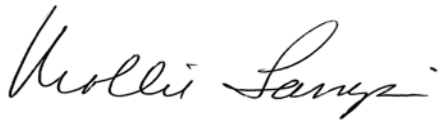
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## X. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, respectfully requests that the Commission accept the proposed changes to the *ISO Agreement* identified in this filing.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.



By \_\_\_\_\_  
Mollie Lampi

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**Filing Letter**

**Appendix**

# **ATTACHMENT I**

## **ATTACHMENT II**

## **ATTACHMENT III**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**New York Independent System Operator, Inc.**

**Docket No. ER04 - \_\_\_\_**

**NOTICE OF FILING**

Take notice that on June 15, 2004, the New York Independent System Operator, Inc. (“NYISO”) filed proposed revisions to the Independent System Operator Agreement. The proposed revisions would amend the Independent System Operator Agreement to allow Demand reduction providers and Distributed Generators to be added as voting members in stakeholder governance.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO’s OATT or Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 224 of the Commission’s Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission’s website at [www.ferc.gov](http://www.ferc.gov), using the FERRIS link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502-8222 or TTY, (202) 208-1659. Protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(I)(iii) and the instructions on the Commission’s website under the “e-filing” link. The Commission strongly encourages electronic filings.

Comment Date:

Magalie R. Salas  
Secretary

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Market Administration and Control Area Services Tariff, as well as the New York State Public Service Commission and the electric utility regulatory agencies in New Jersey and Pennsylvania, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 2010 (2003).

Dated at Washington, D.C. this 15<sup>th</sup> day of July 2004.

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