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May 11, 2009

VIA ELECTRONIC FILING

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

**Re: New York Independent System Operator, Inc., Docket No. ER09-405-001;
Report on Restitution Discussions and Request for Deferral of Ruling**

Dear Secretary Bose:

Transmitted electronically for filing in the referenced docket is the New York Independent System Operator, Inc.'s Report on Restitution Discussions.

If there are any questions concerning this filing, please call me at (202) 661-2212.

Very truly yours,

/s/ Daniel R. Simon

Daniel R. Simon
Counsel for
New York Independent System Operator,
Inc.

Enclosure

cc: Michael A. Bardee, Gregory Berson, Connie Caldwell, Shelton M. Cannon, Larry Gasteiger, Bill Heinrich, Lance Hinrichs, Jeffrey Honeycutt, Kathleen E. Nieman, Rachel Spiker, John Yakobitis

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

New York Independent System Operator, Inc.)

Docket No. ER09-405-001

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.'S
REPORT ON RESTITUTION DISCUSSIONS
AND REQUEST FOR DEFERRAL OF RULING**

In accordance with the Commission's February 9, 2009 letter order in this proceeding, *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,100 at P 17 & Ordering Paragraph C (2009) (the "Order"), the New York Independent System Operator, Inc. (the "NYISO") submits the following report providing information regarding its discussions with stakeholders of whether any course of restitution is feasible.

The NYISO also commits to file a second report on continued stakeholder discussions on or before July 1, 2009, and requests the Commission to defer ruling on its tariff waiver request pending the filing of the report described in P 19 and Ordering Paragraph B of the Order.

I. INTRODUCTION

This proceeding involves the NYISO's December 11, 2008 request to FERC (the Waiver Request"), supported by the affidavit of the NYISO's Independent Market Advisor, David B. Patton, Ph.D., for a limited waiver of tariff provisions necessitated by the modeling values incorrectly introduced into the NYISO's Security Constrained Unit Commitment ("SCUC") software for the Waldwick-Ramapo Phase Angle Regulator ("PAR") for the days of January 11, 2008 and January 14-24, 2008 (collectively, the "Waiver Period").

The Order issued by FERC in response to the Waiver Request instituted a three-part effort:

- pursuant to paragraph 17 of the Order, on March 11, 2009, the NYISO provided market participants with specified analysis and data,¹ and related information, together with a memorandum explaining the data and providing its initial views on the feasibility of restitution, and initiated the process of discussions with stakeholders as to whether any course of restitution is feasible; the Commission required the filing of a report on those discussions on May 11, 2009;
- pursuant to paragraph 18 of the Order, on March 11, 2009, the NYISO filed a report to the Commission regarding the timing and means by which the NYISO informed FERC and its market participants about the PAR issue; and
- pursuant to paragraph 19 of the Order, the NYISO has begun the development of procedures, and has initiated discussions with its market participants, regarding: (i) early notification of stakeholders and stakeholder committees of possible errors affecting its markets; (ii) timely follow-up and detailed explanations regarding errors; and (iii) greater transparency and heightened responsiveness to the stakeholders and appropriate committees; the NYISO will file with the Commission within 180 days of the Order (*i.e.*, by August 10, 2009) either proposed tariff changes, or a status report on the development of such procedures.

II. REPORT ON STAKEHOLDER DISCUSSIONS

A. Process Used For Stakeholder Discussions

Following the NYISO's March 11 provision of data, the NYISO conducted discussions with stakeholders at five committee meetings:

- the March 25, 2009 meeting of the Management Committee;
- the April 1, 2009 meeting of the Market Issues Working Group (a working group of the Business Issues Committee);
- the April 14, 2009 meeting of the Business Issues Committee;
- the April 22, 2009 meeting of the Market Issues Working Group; and
- the April 23, 2009 meeting of the Management Committee.

Dr. David Patton, the NYISO's Independent Market Advisor, participated in the final two meetings by telephone.

¹ The data included the simulations referred to in P 16 of the Order, with caveats about the use of such simulations.

B. Summary of Discussions at Stakeholder Meetings

Discussions to date on the feasibility of restitution have focused on several issues, including

- the definition of feasibility – in order to be just and reasonable, must restitution seek to reconstruct the direct and indirect market impacts of correct PAR inputs and, if so, how precisely (*i.e.*, could there be a “rough justice” remedy and, if so, how would it be calculated?);
- the challenge of reconstructing direct and indirect market impacts, in light of the effect that the incorrect PAR inputs had on market participants’ conduct in the markets during the Waiver Period, and in light of the fact that the incorrect PAR inputs affected the physical operation of the system;
- whether region-wide costs would increase as a result of restitution and, as a corollary, whether a reshuffling of settlement results could cover the asserted costs (*e.g.*, opportunity costs) of all simulated outcomes;
- the “ripple effect” of a rough justice resettlement on Transmission Congestion Contract proceeds, and on hedges and imports/exports executed in alleged reliance on the market results of the incorrect PAR inputs; and
- the policy implications of finding a rough justice restitution “feasible” in terms of market certainty and integrity.

A significant number of stakeholders (including some who believe they were harmed by the results of the incorrect PAR inputs) expressed serious reservations about the feasibility and/or advisability of restitution, and other stakeholders expressed a desire to pursue additional analyses of a rough justice concept. In other words, there is not – as yet – a consensus among stakeholders on the feasibility of restitution.

C. Proposal to Continue Discussions and Commitment to File July 1 Report

In light of the foregoing, the NYISO proposes to continue discussions with stakeholders, and commits to file with the Commission a second report, on or before July 1, 2009, on the results of these further discussions.

III. UPDATE ON THE DEVELOPMENT OF TRANSPARENCY PROCEDURES

At the March 25 meeting of the Management Committee, the April 1 meeting of the Market Issues Working Group, and at the April 6, 8, 13, and 15 stakeholder sector sessions, the NYISO conducted initial discussions with stakeholders concerning the key elements of procedures to promptly notify stakeholders of possible errors affecting its markets, to provide timely follow-up and detailed explanations, and to implement greater transparency and heightened responsiveness to the stakeholders and appropriate committees. These discussions are those described in paragraph 19 and Ordering Paragraph (B) of the order.

The NYISO received helpful input from stakeholders at these meetings, and is refining its strawman outline to facilitate continued progress. The next discussion on this topic will occur at the May 12, 2009 meeting of the Market Issues Working Group.

More broadly, the NYISO has already taken a number of measures to reduce market-related errors, and to detect and disclose any errors promptly.²

² The NYISO notes that, even prior to the Order, it began implementing preventive and diagnostic procedures that would address this type of issue specifically, as well as market anomalies generally. Immediately after correcting the PAR setting errors in the DAM, in January 2008, the NYISO commenced a daily manual examination of the PAR settings and meter values used in the DAM. Thereafter, the NYISO's management further developed and implemented new company controls and procedures to protect against a similar error occurring again. These updated procedures are mapped and periodically reviewed by its Process Controls Group.

The NYISO also developed, with the active involvement and guidance of its senior management, additional procedures and capabilities to perform daily analysis and, where appropriate, investigation of unusual, unexpected or inefficient market outcomes. Thus, in October 2008, the NYISO created the Operations Analysis and Services ("OAS") Group. The OAS Group performs a daily review and root cause analysis of Real-Time Balancing Market Congestion Residual uplift charges and reports the results to all Market Participants at the stakeholders' monthly Management Committee meeting. The OAS Group also monitors and investigates daily operational events that affect NYISO market performance and key market metrics.

IV. REQUEST FOR DEFERRAL OF RULING

In light of the interrelated nature of the efforts to consider the feasibility of restitution and to develop transparency procedures, the NYISO requests the Commission to defer ruling on its tariff waiver request pending the submission of its report on transparency procedures on or before August 10, 2009.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM
OPERATOR, INC.

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May 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 11th day of May, 2009.

/s/ Pamela S. Higgins
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