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May 16, 2002

FILE NO: 55430.4NY127261

By Hand

The Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

New York Independent System Operator, Inc.

**Revisions to Independent System Operator Agreement Relating to the Effective Date of
NYISO Committee Actions, Participation in NYISO Committees, and Several
Technical, Non-Substantive Corrections**

Dear Ms. Salas:

Pursuant to Sections 205 and 206 of the Federal Power Act¹ and Section 35.13 of the Federal Energy Regulatory Commission's (the "Commission") regulations,² the New York Independent System Operator, Inc. (the "NYISO"), by counsel, requests that the Commission authorize it to amend the New York Independent System Operator Agreement³ (the "ISO Agreement") to: (1) reduce the waiting period applicable to actions of the Management Committee, the Operating Committee, and the Business Issues Committee where no appeal is timely filed; (2) add eligibility criteria and quorum rules for voting in the Small Consumer subsector of the End-Use Consumer sector; (3) provide a procedure to challenge a Party's right to participate in NYISO governance; and (4) allow for participation by Non-Voting Entities. In addition, the NYISO proposes to make non-substantive corrections to the ISO Agreement (to correct spelling and similar non-substantive errors). The NYISO respectfully requests that the Commission issue an order making these revisions effective the first business day after this filing (May 17, 2002).

Unless otherwise defined, capitalized terms in this filing letter shall have the meaning set forth in the ISO Agreement and in the Market Administration and Control Area Services Tariff (the "ISO Services Tariff").

I. Documents Submitted

The NYISO submits the following documents:

1. This filing letter;
2. Revised ISO Agreement that reflects the revisions requested in this filing (Attachment I);
3. Blacklined revised ISO Agreement pages that show the revisions requested in this filing (Attachment II); and
4. Draft *Federal Register* Notice (Attachment III).

II. Effective Date

The NYISO proposes to make this filing effective the first business day after this filing (May 17, 2002). There is good cause for a waiver of the Commission's usual 60-day notice requirement: A waiver will allow the various NYISO Committees to conduct their business more efficiently. This filing addresses technical procedures applicable to the NYISO Committees, and received strong support by the members of the Management Committee and the NYISO Board. It should not, as a result, surprise or impede the interests of any party to the ISO Agreement, or the Market Participants⁴ generally.

III. Copies of Correspondence

Copies of correspondence concerning this filing should be served on:

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Belinda Thornton, Director of Regulatory Affairs
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**IV. Names and Addresses of Persons to Whom a Copy
of this Filing Has Been Mailed**

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

V. Explanation of the Proposed Revisions

The proposed changes are described below.

A. Effective Date of Committee Action

The current version of the ISO Agreement provides that actions taken by the Management Committee shall not become effective until thirty days after the Management Committee has acted. (Section 7.11(f).) The ISO Agreement also requires that the by-laws of the Operating Committee and the Business Issues Committee include the same waiting period. (Sections 8.03 and 9.02.)

This lengthy waiting period has, in practice, unnecessarily delayed action by the NYISO Committees on matters where there is no opposition. To promote efficiency for action by the NYISO Committees, the NYISO proposes to amend ISO Agreement Section 7.11(f) to provide that a Committee action that has not been timely appealed shall become effective one business day after the time for a timely appeal has passed. The current language in Section

7.11(f) is retained and the thirty day waiting period will remain for Committee actions that are timely appealed.

B. Voting in the Small Consumer Subsector

The current ISO Agreement provides only minimal standards for voting in the Small Consumer subsector of the End-Use Consumer sector. Under the current ISO Agreement, any person may vote in the Small Consumer subsector if they meet the definition of a “Small Consumer,” broadly defined to include any “Residential Consumer, or an Industrial or Commercial Consumer whose peak Load did not equal or exceed two megawatts in any month within the previous twelve months.” (Section 1.115.) Other than payment of a nominal fee, there are no further eligibility requirements for participating in the Small Consumer subsector, which is allocated 4.5% of the total votes on the NYISO Committees.

The lack of more specific eligibility standards leaves the Small Consumer subsector particularly susceptible to abuse. For instance, under the current rules an individual who has significant interests other than the interests of a typical end-use consumer (an officer or director of a Generator, for example) can vote as an individual member of the Small Consumer subsector (while his or her company casts its own vote in another sector) so long as he or she receives a residential electric bill in New York and does not have a peak Load in excess of 2 MW per month. This loophole, dubbed the “wolf in sheep’s clothing” issue, effectively could give a Party two or more votes on the NYISO Committees. The potential for abuse of the Small Consumer subsector is exacerbated by the significant voting power afforded to each member of that subsector due to the low number of members and the absence of a quorum requirement for that subsector.

To protect the integrity of the Small Consumer subsector, while preserving the rights of legitimate end-use consumers, the NYISO proposes to amend the ISO Agreement to add specific eligibility criteria and quorum rules applicable to the Small Consumer subsector. As indicated in Attachments I and II, the NYISO proposes to amend Section 7.04 to provide that a Party may participate in the Small Consumer subsector as either an individual Small Consumer or an organization that represents Small Consumers. In either case, participation would be limited to parties and organizations that (i) are not affiliated with, employed by, or that have Control of, a Transmission Owner, a Generator, Other Supplier, Public Power Party or Environmental Party and (ii) do not have any significant interest in any aspect of the NYISO markets or operations other than that of Small Consumers.

Individual participation in the Small Consumer subsector would be limited to Small Consumers that have a peak Load in any month within the previous twelve months that was 500 kW or more. Small Consumers that do not meet that 500 kW threshold, however, may form a group of ten or more and participate as an organization in the Small Consumer subsector. Individuals may also participate as Non-Voting Entities (described below). Individuals are also represented in the NYISO governance system by the New York State Consumer Protection Board and other similar consumer protection organizations.⁶ (A complete list of the eligibility criteria is set forth in Attachment II, proposed Section 7.04.)

As revised, Section 7.08(c) would further require the presence of five voting members to constitute a quorum of the Small Consumer subsector. On any particular vote, if there is a quorum for the End-Use Consumer sector but there is not a quorum for the Small Consumer subsector, the parties in the Small Consumer subsector who are present and eligible to vote would be entitled to cast individual votes in accordance with the fractional voting method currently provided in Section 7.09. The remaining voting share allocated to the subsector would be reallocated to the other subsectors of the End-Use Consumer sector on a proportional basis according to the relative voting weight of the subsector. This follows the current practice for fractional voting when a sector does not achieve a quorum.

Other proposed amendments relating to the Small Consumer subsector include the following:

1. The definitions of Small Consumer and Residential Consumer are revised to allow Residential Consumers whose service is not submetered to be included in the definition of Small Consumer and to participate in the Small Consumer subsector. (See Attachment II, proposed amendment to Sections 1.110, 1.115.)
2. The current definition of Small Consumer contains a provision allowing certain Industrial and Commercial Consumers to aggregate usage in order to qualify as Large Consumers. For ease of reference, that provision is moved from the Small Consumer definition to the definition of Large Consumer. (See Attachment II, proposed amendments to Sections 1.57 and 1.115.)
3. Section 7.06 currently provides that an ESCO, Municipal Electric System, Cooperatively Owned Electric System, Generator Owner, State Public Power Authority or Environmental Party may not participate in the End-Use Consumer sector. That provision has merely been moved from Section 7.06 to

Section 7.04. (See Attachment II.)

C. Challenges to Participation in NYISO Governance

In order to ensure the integrity of its governance structure, the NYISO proposes to amend the ISO Agreement to provide a procedure for challenging a Party's eligibility to participate in a particular sector or subsector. As proposed, Section 2.02 will require a new Party to the ISO Agreement to certify that it satisfies the criteria for participation in the sector and subsector in which it wishes to participate. The NYISO will then notify all Parties of the contents of the certification.

Any Party may challenge the new Party's eligibility to participate in a particular sector or subsector by filing a petition with the NYISO Board. The NYISO Board may also initiate a challenge on its own motion. The Party whose status is being challenged will have an opportunity to respond, and all interested Parties will be given an opportunity to comment. The final decision on the petition will be made by the NYISO Board in its discretion. Pending that decision, the President of the NYISO or the NYISO Board may prohibit the Party whose status is being challenged from voting on matters before the NYISO Committees. The NYISO believes that this new procedure will enforce the NYISO's commitment to maintaining the integrity of its governance system and allow the Parties to ensure proper participation in the NYISO.

D. Non-Voting Entities

The NYISO proposes to create a new category for "Non-Voting Entities" to allow broader participation in ISO governance. As revised, Section 2.02 would allow individuals and organizations that either (i) have a significant interest in a sector but do not qualify for membership in that sector or (ii) qualify for membership in a sector but choose not to join that sector, to participate in the governance of the NYISO as Non-Voting Entities. Non-Voting Entities will (i) be Parties to the ISO Agreement, (ii) receive notice of Committee meetings, (iii) be allowed to attend and participate in meetings, including meetings in executive session, and (iv) be allowed to present motions. Non-Voting Entities will not, however, be permitted to vote or to serve as Chair or Vice-Chair of a Committee or subcommittee. The participation fee for Non-Voting entities will be \$100.

The NYISO believes that the creation of Non-Voting Entities will allow the public, including end-use consumers who do not meet the new qualifications for the Small Consumer

subsector, to participate meaningfully in the governance of the NYISO.

E. Technical Corrections

The NYISO takes this opportunity to make several minor corrections to the ISO Agreement. These technical revisions do not involve any substantive modifications and do not raise any policy issue. For example, in Article 1 the sections are currently identified as sections “1.1”, “1.2”, etc. Sections in all other articles of the ISO Agreement are identified with two numbers to the right of the decimal (e.g., 2.01, 2.02). To make Article 1 consistent with the remainder of the ISO Agreement, we have revised the numbering of those sections to “1.01”, “1.02”, etc. In other sections of the Agreement (Section 5.07 for example), the word “committee” has been capitalized to indicate that it is a defined term in Section 1.13 of the ISO Agreement. Several typographical errors have also been corrected. All of the proposed changes are identified in the attached blackline version of the ISO Agreement.

VI. Satisfaction of Sections 205 and 206

Section 19.01 of the ISO Agreement requires that amendments to the governance provisions set forth in a series of Sections, including Sections 7.04, 7.08 and 7.11, must be filed under Section 206 of the Federal Power Act. Section 19.01, however, also requires that amendments to other provisions of the ISO Agreement, including Sections 1.57, 1.110, 1.115, and 2.02, must be filed under Section 205 of the Federal Power Act.

As stated in its May 31, 2000 Filing, the NYISO has taken the position that the Federal Power Act Section 206 requirement in Section 19.01 relates to burden of proof.⁷ The NYISO submits that the amendments proposed here meet that burden. The amendments were approved by the NYISO Board of Directors and by a nearly unanimous vote the Management Committee. In these circumstances, and especially in light of the procedural nature of the revisions requested, the Commission should treat the filing herein as if it were made under Section 205 and approve it without a hearing. The NYISO has complied with all the Section 205 filing requirements, and requests any waivers necessary to make this filing effective as of May 17, 2002.

VII. Requisite Agreement

The Management Committee's By-laws and Governance Subcommittee developed and adopted the revisions to the ISO Agreement requested here. On July 12, 2001, members of the Management Committee reviewed and adopted the proposed revisions to Section 7.11(f) and the technical amendments by a unanimous show of hands.⁸ The proposed amendments to the Small Consumer provisions, the addition of a process for challenging participation in NYISO governance, and the terms for Non-Voting Entities were reviewed and approved by the Management Committee on February 7, 2002.⁹ The NYISO's independent Board of Directors subsequently approved all of the proposed revisions.

VIII. No Costs Relating to Discriminatory Employment Practices

The NYISO has no knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative or unnecessary costs that are demonstrably the product of discriminatory employment practices.

IX.

Federal Register Notice

A form of *Federal Register* Notice is provided as Attachment III hereto. A diskette of the Notice is also provided in WordPerfect format.

Respectfully submitted,

Kathy Robb
Counsel for
New York Independent System Operator, Inc.

Attachments

cc: Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01,
Tel. (202) 208-2088
Alice M. Fernandez, Director Office of Markets, Tariffs and Rates -- East Division,
Room 71-31, Tel. (202) 208-0089
Andrea C. Wolfman, Lead Counsel for Market Oversight and Enforcement,
Room 9E-01, Tel. (202) 208-2097
Michael A. Bardee, Lead Counsel for Markets, Tariffs and Rates, Room 101-09,
Tel. (202) 208-2068
Stanley P. Wolf, Office of the General Counsel, Room 101-03,
Tel. (202) 208-0891

Attachment I

Attachment II

Attachment III

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

New York Independent System Operator, Inc.) Docket No. _____

NOTICE OF FILING

Take notice that the New York Independent System Operator, Inc. (“NYISO”) on May 16, 2002 tendered for filing proposed revisions to the NYISO Agreement. The NYISO requests an effective date of one business day after this filing (May 17, 2002).

Copies of this filing were served upon all parties that have executed Service Agreements under the NYISO’s Open-Access Transmission Tariff or Services Tariff, to the New York State Public Service 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 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). All such motions or protests must be filed in accordance with § 35.8 of the Commission’s regulations. Protests will be considered by the Commission in determining 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

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 Services Tariff, to the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2001).

Dated at Washington, D.C., this 16th day of May, 2002.

Catherine A. Karimi
Sr. Professional Assistant
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006-1109
(202) 955-1500

16 U.S.C. § 791a-825r.

1 18 C.F.R. § 35.13.

2 Signed in 1999 by Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New
York, Inc., Long Island Power Authority, New York State Electric and Gas Corporation, Niagara Mohawk Power
Corporation, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, and New York Power
Authority, and amended by subsequent filings with FERC.

3 Section 2.103 of the ISO Services Tariff defines “Market Participant” as “[a]n entity, excluding the ISO,
that produces, transmits, sells, and/or purchase for resale Capacity, Energy or Ancillary Services in the Wholesale
Market. Market Participants include: Transmission Customers under the ISO OATT, Customers under the ISO
Services Tariff, Power Exchanges, Transmission Owners, Primary Holders, LSEs, Suppliers and their designated
agents. Market Participants also include entities buying or selling TCCs.”

4 The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) to permit service on counsel for the
NYISO in both New York and Washington, D.C.

5 The proposed amendments to the Small Consumer provisions were approved by 95.29% of the
Management Committee. Motion #3, NYISO Management Committee Meeting, Feb. 7, 2002, Motions from the
Meeting, www4.nyiso.com/services/documents/groups/mgmt_comm/02_07_02/motions_020702.pdf. An
alternative proposal that would have eliminated the 500 kW threshold was also presented to the Management
Committee, and was defeated, carrying only 39.83%. Motion #4, NYISO Management Committee Meeting, Feb. 7,
2002, Motions from the Meeting, [www4.nyiso.com/services/documents/groups/mgmt_comm/02_07_02/
motions_020702.pdf](http://www4.nyiso.com/services/documents/groups/mgmt_comm/02_07_02/motions_020702.pdf). A subsequent appeal of the Management Committee’s decision to include the 500 kW
requirement was also rejected by the NYISO Board of Directors. NYISO Board of Directors Decision on William
P. Short’s Appeal of the Management Committee Vote on Rules for Participation in the Small Consumer Subsector,
available at: [www4.nyiso.com/services/documents/groups/board_of_directors/pdf/nyiso_board_dec
_wmshort_appeal.pdf](http://www4.nyiso.com/services/documents/groups/board_of_directors/pdf/nyiso_board_dec
_wmshort_appeal.pdf)

6 New York Independent System Operator, Inc., Revisions to Independent System Operator Agreement
(May 31, 2000). Accepted for filing in ER00-2652-000 (July 13, 2000).

7 Motion #8, NYISO Management Committee Meeting, July 12, 2001, Motions from the Meeting,
http://www.nyiso.com/services/documents/groups/mgmt_comm/07_12_01/motions_summary.pdf.

8 Motion #3, NYISO Management Committee Meeting, Feb. 7, 2002, Motions from the Meeting,
www4.nyiso.com/services/documents/groups/mgmt_comm/02_07_02/motions_020702.pdf.