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PUBLIC TRANSMITTAL LETTER

(THIS TRANSMITTAL LETTER DOES NOT CONTAIN ANY PRIVILEGED INFORMATION)

August 4, 2008

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Report of Real-Time Guarantee Payment Impact Test Results for April 7, 2006 to October 31, 2007, Request for Limited Tariff Waiver and Request for Privileged Treatment; Docket No. ER06-185-____

Dear Secretary Bose:

In accordance with ordering paragraph B of the Federal Energy Regulatory Commission's ("Commission's") April 7, 2006 order in Docket Nos. ER06-185-000 and 001 ("April 7 Order")¹ and footnote no. 7 of the Commission's November 3, 2006 order in Docket No. ER06-185-002 ("November 3 Order"),² the New York Independent System Operator, Inc. ("NYISO") submits the results of its real-time guarantee payment impact test ("RTGP impact test") for the period from April 7, 2006 to October 31, 2007. A detailed description of the NYISO's RTGP impact test methodology was included in the Initial Informational Filing and Request for Limited Tariff Waiver that the NYISO submitted to the Commission on September 5, 2006 in Docket No. ER06-185-002. The NYISO implemented its going forward RTGP impact test on October 31, 2007. Accordingly, this report covers the final period during which the NYISO "manually" corrected Bid Production Cost guarantee payments after-the-fact in order to apply Tariff-required mitigation and conform to the terms and conditions set forth in its filed rates. In reviewing the data for this final "manual" mitigation period, the NYISO has identified a total of approximately \$3,500.00 of mitigation that its manual review process did not timely

¹ New York Independent System Operator, Inc., 115 FERC ¶ 61,026 (2006).

² New York Independent System Operator, Inc., 117 FERC ¶ 61,164 (2006).

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identify. Below the NYISO requests a limited Tariff waiver to excuse its failure to apply this guarantee payment mitigation.

I. RTGP Impact Test Data

The RTGP impact test data on the enclosed CD reflects the NYISO's correction of certain errors in the application of its market mitigation measures set forth in Attachment H of its Market Administration and Control Area Services Tariff ("Services Tariff") to transactions in the Real-Time Market during the period April 7, 2006 to October 31, 2007. Most of the mitigation issues affected Generators³ in New York City, which is a "Constrained Area" pursuant to Section 2.1 of Attachment H.

To correct the application of the market mitigation measures for the relevant transactions, NYISO staff reviewed each of the three components of Real-Time Bids -- that is, for Energy, Start-up, and Minimum Generation -- submitted by Generators during the relevant period to determine (1) whether those Bids failed the applicable conduct test, and (2) if so, whether those Bids had an impact on the Real-Time Bid Production Cost guarantee payments paid to those generators for each 24-hour period over the April 7, 2006 to October 31, 2007 timeframe. The conduct and impact analyses were based on reference prices calculated for each Generator pursuant to Section 3.1.4 of Attachment H. If the NYISO staff determined that the Energy, Start-up, or Minimum Generation Bid had the requisite market impact specified in Section 3.2.1 of the MMM on the Bid Production Cost guarantee payments to a Generator during a particular 24-hour period, then those payments were mitigated to the level of the Bid Production Cost guarantee that should have been paid to the Generator over that 24-hour period (if any).

The enclosed CD reflects the revised mitigation determined by the NYISO for Real-Time transactions during the April 7, 2006 to October 31, 2007 time period. As explained in more detail in Attachment I, the data summarizes the revised mitigation in five different ways -- (1) on an aggregate basis for each hour; (2) on an aggregate basis for each day; (3) on an hourly basis for Start-up Bids only; (4) on an hourly basis for Energy bids only; and (5) on an hourly basis for Minimum Generation bids only. All of this revised data has been shared with affected Generators, and those Generators have had a full opportunity to consult with the NYISO on the revised mitigation. Thus, the data contained herein reflects the results of consultation between the NYISO and the affected Generators.

³ Capitalized terms not expressly defined herein shall have the meaning ascribed to them in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

II. Request for Confidential Treatment

Pursuant to Section 388.112 of the Commission's regulations, the NYISO respectfully requests that the Commission treat as privileged and confidential Generator reference levels and daily and hourly details of proposed RTGP mitigation. Revealing either a Generator's reference levels or its RTGP mitigated Bids would allow competing Market Participants to determine a Generator's marginal costs. The public disclosure of a Generator's marginal costs can cause competitive harm to that Generator, and can unfairly advantage competing Market Participants. Furthermore, Section 2.8 of the NYISO's Commission-accepted Market Monitoring Plan requires the NYISO to safeguard the confidentiality of "information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the NY ISO or by the NY ISO." Reference levels and mitigation data have been designated by Market Participants and by the NYISO as confidential. The prohibition on disclosure of confidential data by the NYISO is mandated by Section 4 of the NYISO's Code of Conduct,⁴ and Article 6 of the Services Tariff.⁵ Accordingly, the Commission should treat the Generator reference levels and mitigation data attached hereto as privileged and confidential.⁶

III. Request for Limited Waiver

⁴ The Code of Conduct is set forth in Attachment F to the NYISO's Open Access Transmission Tariff. Section 4 defines Confidential Information, in relevant part, as "any commercially sensitive information including, without limitation, trade secrets, equipment specific information (e.g., Generator specific data such as heat rates, etc.), and business strategies, affirmatively designated as Confidential Information by its supplier or owner" Section 4 provides further that, in submitting Confidential Information to "the FERC or its staff, the ISO shall, consistent with any FERC rules or regulations that may provide for privileged treatment of that information, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure."

⁵ Article 6 of the Services Tariff provides, in relevant part, that the NYISO "shall not publish, disclose or otherwise divulge Confidential Information to any person or entity without the prior written consent of the party supplying such Confidential Information, except as provided for under the ISO Market Power Monitoring Plan and/or ISO Code of Conduct." Confidential Information, in turn, is defined in Section 2.25 of the Services Tariff as information "that has been designated by a Customer to be proprietary and confidential, provided that such designation is consistent with the ISO Procedures, the ISO Services Tariff, and the ISO Code of Conduct."

⁶ The bid data contained in the spreadsheets is being made public pursuant to the Commission's directive in its March 15, 2007 order in this proceeding. See *New York Independent System Operator, Inc.*, 118 FERC ¶ 61, 201 at PP 23-25 (2007). This bid data is now more than six months old, and has been posted on the NYISO's website. The NYISO has masked the identification of the specific generators and sellers in the attached spreadsheets.

The NYISO also informs the Commission that there were five transactions during August 2007 for which mitigation that should have applied under the application of the RTGP impact test -- totaling approximately \$3,500 in aggregate -- was inadvertently missed by the NYISO. The largest of the five instances resulted in missed mitigation totaling \$1,386.89. As the NYISO has described in prior filings in this docket, the application of the RTGP impact test was a manual process, and in the application of that process, the NYISO inadvertently did not apply the necessary mitigation to these five transactions. Following a comprehensive review, the NYISO is not aware of any other transactions for which mitigation was overlooked in the application of the RTGP impact test.

The NYISO respectfully requests that the Commission grant it a limited waiver to excuse the NYISO from having to rerun the settlements for those five transactions. The Commission's evaluation of whether it should permit waivers in similar circumstances has focused on several key points, including whether: (1) the entity seeking the waiver acted in good faith; (2) the waiver is of a limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.⁷ In this case, the NYISO acted at all times in good faith, and its failure to apply guarantee payment mitigation to five transactions over an eighteen month period was entirely inadvertent. Furthermore, because the waiver would apply only to five transactions, and to mitigation totaling only \$3,500, it is of limited scope, and would not unduly harm third parties. Finally, a waiver would allow the NYISO to bring the transactions during the period April 7, 2006 to October 31, 2007 to a close, and focus its limited resources on proper implementation of mitigation measures for prospective transactions. Accordingly, the Commission should grant a limited waiver to the NYISO necessary to excuse the NYISO from having to apply mitigation to the five transactions at issue.

IV. Contents of Filing

This filing consists of the following documents:

1. This filing letter;
2. A non-confidential description of the spreadsheets reflecting the results of the RTGP impact test (Attachment I); and
3. A CD containing electronic copies of this filing letter and Attachment I, and spreadsheets reflecting the results of the RTGP impact test from April 7, 2006 to

⁷ See *ISO New England, Inc.*, 117 FERC ¶ 61,171 at P 21 (2006); see also *Wisvest-Connecticut*, 101 FERC ¶ 61,372 at 62,551 (2002).

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October 31, 2007. (Attachment II). The public version of Attachment II contains redacted spreadsheets that omit Generators' reference levels and the daily and hourly details of the proposed RTGP mitigation. The privileged and confidential version of Attachment II contains the complete results of the RTGP impact test. For the reasons explained in this letter, the Generator reference levels and RTGP mitigation data in these spreadsheets are privileged and confidential, and should not be released.

Pursuant to 18 C.F.R. § 388.112 and the filing instructions posted on the Commission's website, the NYISO is submitting (1) an original and 14 copies of the public version of this filing (consisting of this letter, the non-confidential description of the RTGP impact test spreadsheets, and a CD containing this letter, the non-confidential description of the spreadsheets, and the public version of the RTGP impact test data) and (2) one copy of the privileged and confidential version of this filing (consisting of this letter, the non-confidential description of the RTGP impact test spreadsheets, and a CD containing this letter, the non-confidential description of the spreadsheets, and the privileged and confidential version of the RTGP impact test data). The label on the CD containing the privileged and confidential version of this filing, and each page of data on that CD containing privileged and confidential information, is clearly marked with the heading "**CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.**"

Please contact the undersigned with all questions regarding the NYISO's claims of privilege and/or questions regarding the privileged and confidential documents submitted herewith.

To the extent that the Commission's regulations otherwise require that the NYISO submit a paper copy of this entire filing, the NYISO respectfully requests a waiver of that requirement to permit the NYISO to file its attachments on CD only. The RTGP impact test data submitted in this filing covers an 18-month period, and is voluminous. Submission of this data on CD only not only makes this filing more manageable, but also conserves significant paper resources.

V. Service

The NYISO is electronically serving a copy of the public version of this filing on the parties included on the Secretary's official service list in the above-captioned docket, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, the complete public version of this filing has been posted on the NYISO's website at www.nyiso.com. The NYISO will also make a paper copy of the public version available to any interested party that requests one.

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In addition, courtesy copies of this filing, including the privileged and confidential information submitted with this letter, have been provided to Larry Gasteiger and Connie Caldwell of the Commission Staff.

Respectfully submitted,

/s/ Brian M. Zimmet

Brian M. Zimmet

Counsel to the
New York Independent System Operator, Inc.

Attachments

cc: Larry Gasteiger
Connie Caldwell

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 4th day of August, 2008, at Washington, D.C.

/s/ Brian M. Zimmet

Brian M. Zimmet
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006

Attachment I

This Attachment I explains how to read and interpret the data provided in the New York Independent System Operator, Inc.'s ("NYISO's") August 4, 2008 Report of Real-Time Guarantee Payment Impact Test Results for April 7, 2006 to October 31, 2007, Request for Limited Tariff Waiver and Request for Privileged Treatment ("Informational Filing"). Attachment II addresses the Bid Production Cost Guarantee ("BPCG") payments identified for potential mitigation by the NYISO's Real-Time guarantee payment impact test ("RTGP Test") for the April 7, 2006 to October 31, 2007 period.

Attachment II contains five worksheets pertaining to the adjusted BPCG settlement.

A daily summary by Generator and monthly totals by Organization (Daily BPCG Output).

An hourly summary by Generator (Hourly BPCG Outputs)

Details on start up bids affected by mitigation (Startup Inputs)

Details on minimum generation bids affected by mitigation (MinGen Inputs)

Details on incremental energy bids affected by mitigation (Inc Energy Inputs)

Set forth below are descriptions of each of the columns in each of the five worksheets:

The **Daily BPCG Output** worksheet contains daily mitigation impacts by owner (Organization), by generator. A generator fails the RTGP Test if the "As-Bid BPCG (\$)" as shown in Column D exceeds the "As-Mitigated BPCG (\$)" as shown in Column E by 50%.

- Column A: Org Name
- Column B: Gen Name
- Column C: Interval Start Day (Eastern Time) - Day with BPCG adjustment
- Column D: As-Bid BPCG (\$) - 24 hour BPCG as determined in the original real-time "RT" settlement. May reflect some AMP mitigation, but does not include any RTGP mitigation.
- Column E: As-Mitigated BPCG (\$) - Mitigated BPCG as determined by the RTGP Test.
- Column F: Adjustment (\$) - Adjustment determined by the RTGP Test for the day. This adjustment reflects the amount owed by generators.
- Note: A monthly total by Org Name is also included.

The **Hourly BPCG Outputs** worksheet contains an hourly summary of RTGP mitigation for all hours (including hours where there were no conduct falling bids, and thus no mitigation) on days when RTGP mitigation was determined to be appropriate by the RTGP Test. The BPCG payment and the RTGP Test are based on a daily calculation rolled up from hourly components. In this worksheet, the hourly components are negative when a generator's revenue exceeds its bid cost. The hourly components are positive when a generator's bid cost exceeds its revenue. If a generator's daily bid costs exceed its daily revenues, a BPCG payment is ordinarily required to cover the daily bid

costs. If, on a daily basis, the generator revenues exceed its bid cost, then no BPCG payment is needed for the generator.

- Column A: Org Name
- Column B: Gen Name
- Column C: Date Hour (Eastern Time) Note: Two hourly entries include an “*” in Column C, indicating that there was a problem with the market close process that prevented the completion of the corresponding conduct tests in the NYISO's Market Information System (“MIS”) for that hour. A Tariff Waiver is requested for hours impacted by a market close failure in the Informational Filing to which this Attachment I is appended.
- Column D: As-Bid BPCG Hourly Component (\$) - Sum of “As-Bid Hourly Startup Cost (\$)” and “As-Bid Hourly Energy and MinGen (\$)” as included in the original settlement and described below (may include some bids or bid components that were already AMP mitigated).
- Column E: As-Mitigated BPCG Hourly Component (\$): Sum of “As-Mitigated Hourly Startup Cost (\$)” and “As-Mitigated Hourly Energy and MinGen (\$)” as determined by the RTGP Test and described below.
- Column F: As-Bid Hourly Startup Cost (\$) - The startup cost as included in the original real time “RT” settlement (may have already been AMP mitigated).
- Column G: As-Mitigated Hourly Startup Cost (\$) - Mitigated start up cost as determined by the RTGP Test.
- Column H: As-Bid Hourly Energy and MinGen (\$) - Sum of the incremental energy, minimum generation and ancillary services payments as included in the original settlement (may include bids or bid components that were already AMP mitigated).
- Column I: As-Mitigated Hourly Energy and MinGen (\$) - Sum of the mitigated incremental energy, mitigated minimum generation and original ancillary services payments as determined by the RTGP Test.

The **Startup Inputs** worksheet contains the hourly bid detail for generators with startup payments that are affected by RTGP mitigation. Only hours with startup mitigation are displayed. In order to ensure that only mitigated startup bids are included, the NYISO has filtered for a difference in net revenue for the hour that exceeds \$0.05. The filter eliminates rounding differences.

- Column A: Org Name
- Column B: Gen Name
- Column C: Date Hour (Eastern Time)
- Column D through Column I: Downtime - Pt# (Hours) - Generators that have been shut down for a short period of time may incur reduced startup costs to resume operation. The NYISO reflects these reduced startup costs via generator-specific startup cost curves. The startup curve may include up to six bid points. The data in columns D through I of the Startup Inputs worksheet reflect generator downtime in hours, as included in the startup

curve used in the original settlement. Null entries indicate no corresponding point on the curve.

- Column J through Column O: As-Bid Gen Startup Cost- Pt# (\$) - Startup dollars that correspond with downtimes as included in the startup curve used in the original settlement (may include points on the startup curve that were already AMP mitigated). Null entries indicate no corresponding point on the curve.
- Column P through Column U: As-Mitigated Gen Startup Cost - Pt# (\$) - Mitigated startup dollars that correspond with downtimes as included in the mitigated startup curve and applied based on the RTGP Test's determination of RTGP impact. Null entries indicate no corresponding point on the curve.

The **MinGen Inputs** worksheet includes all the hourly bid detail for minimum generation bids affected by RTGP mitigation. Only hours that include mitigation are displayed. In order to ensure that only mitigated minimum generation bids are included, the NYISO has filtered for a difference in net revenue for the hour that exceeds \$0.05. The filter eliminates rounding differences.

- Column A: * or blank. For certain hours there are 2 lines of data. The second data entry for the hour, which will have an "*" in column A, addresses the last five minutes of the hour. RT prices and schedules are determined in five minute intervals and reflect system conditions at the end of the interval. The last five minutes of each hour uses the next hour's bid data to determine costs for the interval and the mitigation results may, therefore, vary from the results for the first 55 minutes of the hour.
- Column B: Org Name
- Column C: Gen Name
- Column D: Date Hour (Eastern Time)
- Column E: Min Gen MW (MW) - The number of MW being offered in the minimum generation block bid.
- Column F: As-Bid Min Gen Cost (\$) - The minimum generation bid dollars as included in the original settlement (may include some bids that have already been AMP mitigated).
- Column G: As-Mitigated Min Gen Cost (\$) - The mitigated minimum generation bid dollars as determined by the RTGP Test.

The **Incremental Energy Inputs** worksheet includes all the hourly bid detail for energy bids affected by RTGP mitigation. In order to ensure that only mitigated energy bids are included, the NYISO has filtered for a difference in net revenue for the hour that exceeds \$0.05. The filter eliminates rounding differences.

- Column A: * or blank. For certain hours there are 2 lines of data. The second data entry for the hour, which will have an "*" in column A, addresses the last five minutes of the hour. RT prices and schedules are determined in five minute intervals and reflect system conditions at the

end of the interval. The last five minutes of each hour uses the next hour's bid data to determine costs for the interval and the mitigation results may, therefore, vary from the results for the first 55 minutes of the hour.

- Column B: Org Name
- Column C: Gen Name
- Column D: Date Hour (Eastern Time)
- Column E through Column P: As-Bid Gen MW - Pt# (MW) - Dispatch point in MW in accordance with the incremental energy curve used in the original settlement. The energy curve may include up to twelve bid points. Null entries indicate no corresponding point on the curve.
- Column Q through Column AB: As-Bid Gen \$/MW - Pt# (\$/MW) - Dispatch dollars (\$/MW) in accordance with the incremental energy curve used in the original settlement (may include some bid components that have already been AMP mitigated). Null entries indicate no corresponding point on the curve.
- Column AC through Column AN: As-Mitigated Gen MW - Pt# (MW) - Mitigated dispatch point in MW as determined by the RTGP Test. Null entries indicate no corresponding point on the curve.
- Column AO through Column AZ: As-Mitigated Gen \$/MW - Pt# (\$/MW) - Mitigated dispatch dollars (\$/MW) as determined by the RTGP Test. Null entries indicate no corresponding point on the curve.