UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Wholesale Competition in Regions with Organized Electric Markets	))	**Docket Nos. RM07-19-000 AD07-7-000**

COMMENTS OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In compliance with Paragraph 292 of the Commission's February 22, 2008 *Notice of Proposed Rulemaking* ("NOPR") in the above-captioned proceeding,[1] the New York Independent System Operator, Inc. ("NYISO") respectfully submits these comments. The NYISO strongly supports the Commission's emphasis on targeted reforms and its recognition that there are differences among the various organized market regions that should be respected. With the handful of exceptions, and requests for clarification of certain details, which are noted below, the NYISO agrees with all of the NOPR's reform proposals.

I. THE NOPR IS APPROPRIATELY FOCUSED ON TARGETED REFORMS

The NOPR correctly focuses on promoting reforms in the four specific areas that were addressed in the *Advanced Notice of Proposed Rulemaking*.[2] Namely: (1) demand response and market pricing during operating reserve shortages; (2) long-term power contracting; (3) market-monitoring policies; and (4) the responsiveness of Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs") to

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[1] *Notice of Proposed Rulemaking on Wholesale Competition in Regions with Organized Electric Markets*, 122 FERC ¶ 61,167, Docket Nos. RM07-19-000 and AD07-7, Feb. 22, 2008.

[2] *Wholesale Competition in Regions with Organized Electric Markets*, *Advanced Notice of Proposed Rulemaking*, 72 Fed. Reg. 36,276 (July 2, 2007), FERC Stat. & Reg. ¶ 32,617 (2007).

their stakeholders and customers.[3] As the NOPR explains, there now exists "a solid record in favor of making . . . reforms, and a strong sense of what the Commission can do to be helpful in these four areas."[4]

At the same time, the NOPR properly casts its main initiatives as part of an ongoing effort to ensure that organized markets work well and, ultimately, serve the interests of the consumers that pay for electricity services. The NYISO has previously noted that the organized markets are benefiting consumers but acknowledged that there is no room for complacency. The NYISO remains committed to continuing and cost effective improvement.[5] Consistent with the recommendations of the ISO/RTO Council ("IRC"),[6] if there are specific concerns about particular organized market issues that go beyond the NOPR's targeted reforms they should first be raised at the regional level. For its part, the NYISO will adopt the NOPR's suggestion that all ISOs/RTOs give priority to any significant market design concerns that may be raised in their stakeholder processes, without waiting for the issuance of a final rule in this proceeding.[7]

The Commission should continue to reject any proposals that would expand the scope of this proceeding to encompass generalized complaints about organized markets or permit collateral attacks on past orders approving their core design features. The NOPR rightly observes that a number of commenters in earlier stages of this proceeding have vociferously denounced supposed flaws in the organized markets without offering constructive suggestions. The Commission has appropriately recognized the benefits of

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3 NOPR at P 1.

4 NOPR at P 17.

5 *See* NYISO ANOPR comments at 3.

6 *See* NOPR at P 17, n. 12.

7 NOPR at P 24.

organized markets and should continue to allow regions to voluntarily choose to implement them.[8] Critics should be encouraged to focus on collaborative efforts to improve the markets rather than on confrontational rhetoric.

II. SPECIFIC COMMENTS ON THE FOUR MAJOR REFORMS PROPOSED BY THE NOPR

A. Demand Response and Pricing During Periods of Operating Reserves Shortages

The NYISO has always supported the Commission's policy that the organized markets should accommodate participation by demand resources, on terms comparable to generators, to the greatest extent practicable.[9] The NYISO likewise supports the specific, near-term proposals in the NOPR to eliminate barriers to demand response. Consistent with the Commission's policies, the NYISO has recently filed proposed tariff revisions that would significantly expand demand resources' ability to participate in the NYISO-administered markets.[10] The NYISO is thus already well on its way to addressing the Commission's immediate concerns.

The NYISO also agrees that the NOPR should not mark the end of the Commission's efforts in the demand response area. Further improvement may be obtainable and additional enhancements should be explored.[11] The NYISO looks forward to participating in the Commission's May 21 technical conference on future demand side

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[8] NOPR at P 13.

[9] NOPR at P 60.

[10] *See* New York Independent System Operator, Inc., *Compliance Revisions to its Market Administration and Control Area Services Tariff and Open Access Transmission Tariff to Allow Certain Demand Side Resources to Offer Operating Reserves and Regulation Service into the NYISO's Markets*, Docket No. ER04-230-034, (March 24, 2008) ("NYISO March 24 Filing").

[11] In the same vein, as the NYISO's March 24 Filing explained, the NYISO intends to pursue additional initiatives to facilitate demand resource participation in its own markets in the future.

reforms,[12] and has no objection to preparing the post-Final Rule report that the NOPR proposes.[13] The NYISO is also participating in today's ISO/RTO Council's ("IRC") technical conference on demand response.[14] It is focused on: (i) the joint initiative of the IRC and the North American Energy Standards Board ("NAESB") to develop national standards for the measurement and verification of demand response programs and resources; and (ii) the development of standardized communication protocols and possible North American Electric Reliability Corporation ("NERC") standards to make it easier for small demand resources to participate in ISO/RTO energy and ancillary services markets.

In the sections that follow, the NYISO provides specific comments on certain aspects of the NOPR's proposals. The NYISO is also a signatory to the IRC's joint comments on demand response and scarcity pricing issues and incorporates those comments by reference here.

1. Ancillary Services Provided by Demand Response Resources

The NOPR proposes:

> [T]o obligate each RTO or ISO to accept bids from demand response resources, on a basis comparable to any other resources, for ancillary services that are acquired in a competitive bidding process, if the demand response resources (1) are technically capable of providing the ancillary service and meet the necessary technical requirements, and (2) submit a bid under the generally-applicable bidding rules at or below the market-clearing price, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate. This proposal would apply to competitively-bid markets, if any, for energy imbalance, spinning reserves, supplemental reserves, reactive supply and

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12 NOPR at 95.

13 NOPR at 95-96.

14 *See* *<http://www.isorto.org/site/apps/nlnet/content2.aspx?c=jhKQIZPBImE&b=2613997&content_id={1BE9C2CE-A4F3-4899-879D-162D8AD8DA66}&notoc=1>*

> voltage control, and regulation and frequency response as defined in the pro forma OATT, or to the markets of their functional equivalents in an RTO or ISO tariff. We propose that demand response resources that are capable of reducing demand within the response time requirement for the ancillary service and that meet reasonable requirements adopted by the RTO or ISO as to size, telemetry, metering, and bidding be eligible to supply energy imbalance, spinning reserves, supplemental reserves, reactive and voltage control, and regulation and frequency response.[15]

The NYISO supports the NOPR's proposal. As was noted above, the NYISO has a filing pending before the Commission that would allow demand resources to participate on terms comparable to generators, to the maximum extent practicable given reliability and technical limitations, in its all of its ancillary services markets. These are its markets for Regulation Service and for 10-Minute Synchronized, 10-Minute Non-Synchronized, and 30-Minute Operating Reserves.

The NYISO recommends that the final rule clarify the NOPR's proposed regulatory language to specify that demand response resources must also meet "applicable reliability requirements" before they are permitted to bid into markets. Such language would make it clear that the Commission's support for the integration of demand resources into the markets does not override requirements adopted by NERC, a regional reliability entity, or, in the NYISO's case, the New York State Reliability Council.[16] This would be consistent with the approach that the Commission took in

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15 NOPR at P 56. Similar language appears in proposed Section 35.28 of the Commission's regulations.

16 Under Section 215 (h) (3) of the Federal Power Act, New York State is authorized to establish reliability rules more stringent than national or regional standards. New York State has adopted a number of reliability rules promulgated by the New York State Reliability Council for purposes of Section 215 (h) (3). Although the proposed regulatory text references compliance with "laws or regulations of the relevant retail regulatory authority" it does not appear that this language is broad enough to encompass applicable reliability rules.

Order No. 890-A, which allows ISO/RTOs to adopt reasonable reliability related limitations on demand resource participation.[17]

The NOPR appropriately modified the ANOPR's preliminary proposal that demand resources be permitted to provide spinning and supplemental reserves without also being required to sell into the energy market. As the NOPR states, such a requirement would be very disruptive for ISOs/RTOs that have co-optimized energy and ancillary services markets.[18] The efficiency benefits of co-optimization are substantial and redound to the benefit of consumers. ISOs/RTOs should be allowed, as the NOPR proposes, to accommodate demand resources in a way that works within a co-optimized system.

The NYISO respectfully submits, however, that the regulatory text that the NOPR has proposed on this issue may be unduly prescriptive and inflexible.[19] Rather than directing all ISOs/RTOs to establish identical bidding parameters, the Commission should require each ISO/RTO to propose a regionally-appropriate approach that will allow DSRs to participate on comparable terms as generators while effectively insulating them from the disincentive to offer ancillary services that exposure to the energy market might bring. Mandating that all ISOs/RTOs allow demand resources to submit certain bidding parameters may be unnecessary in regions where markets are not co-optimized. Moreover, specifying certain bidding parameters in the regulations may prove problematic in the future as ISO/RTO market designs continue to evolve.

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[17] Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 499.

[18] NOPR at PP 60-61.

[19] *See* Proposed Section 35.28 (g) (1) (i) (b) of the Commission's regulations.

2. Deviation Charges

The NOPR proposes to revise the Commission's regulations to establish a new Section 35.28(g)(1)(ii):

> Removal of deviation charges. A Commission-approved ISO or RTO with a tariff that contains a day-ahead and a real-time market may not assess a charge to a purchaser of electric energy in its day-ahead market for purchasing less power in the real-time market during a real-time market period for which the Commission-approved ISO or RTO declares an operating reserve shortage or makes a generic request to reduce load to avoid an operating reserve shortage.

The ANOPR clearly stated that the Commission's "deviation charge" proposal was not intended to alter the normal operations of "two-settlement" market systems. Specifically, the ANOPR stated that:

> Before setting out the specific proposal to eliminate this deviation charge, it is necessary to summarize first how the day-ahead and real-time markets relate. A buyer that makes a purchase in the day-ahead market has a commitment to pay for the amount of energy it purchases at the day-ahead market price. If that buyer consumes more energy in real-time than it bought the day before, it pays the day-ahead market price for the amount purchased in the day-ahead market and in addition pays the real-time market price for the extra energy consumed. The real-time price may be higher or lower than the day-ahead price. If the buyer takes less energy in the real-time market than it purchased in the day-ahead market, in effect it sells the reduction back to the market at the real-time market price. The buyer profits if it sells the energy reduction back when the real-time price is higher than the day-ahead price, and suffers a loss when the real-time price is lower. Nothing in the proposal here would change this effect.[20]

The NOPR does not contain the same express statement. The NOPR does note, however, that "[d]eviation charges recover certain costs including importantly generators' costs (such as start-up costs) that exceed their energy market revenues when real-time demand is less than forecast." It goes on to describe "deviation charges" as "uplift costs" that "may include the costs of extra generators committed after the close of the day-ahead

[20] *See* ANOPR at P 63.

market that are not recovered from sales of energy at real-time LBMP."[21] Finally, the NOPR clarifies, in language echoing the ANOPR, that its proposal is not intended to "remove any penalty for a day-ahead bidder of demand response who fails to reduce demand in real-time . . . "[22]

In its ANOPR comments, the NYISO stated that it was taking no position on the deviation charge proposal because it does not have the kind of special uplift charges for demand resources that the ANOPR was proposing to eliminate. Based on the language quoted above, the NYISO again believes that it does not have the kind of uplift charge that the NOPR is addressing. It therefore has no objection to the NOPR's proposal. If, however, the Commission later clarifies in the final rule that the NOPR's proposal is actually broader in scope, the NYISO respectfully reserves the right to seek rehearing.

In addition, assuming that the NYISO correctly understands the scope of the NOPR's proposal, the NYISO respectfully recommends that the Commission clarify its proposed regulatory text. The text would be clearer if it referred to "deviation charges," instead of the more expansive term "charge" and if a definition of "deviation charge," consistent with the ANOPR language quoted above, were added.

Finally, the NOPR also seeks comments on "whether to require RTO and ISO tariffs to be modified to eliminate deviation charges for virtual purchasers during system emergencies."[23] This issue is addressed in the IRC's comments, which the NYISO incorporates by reference here.

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[21] NOPR at P 72, n. 82.

[22] NOPR at P 76.

[23] NOPR at P 78.

3. Aggregation of Retail Customers

The NOPR proposes to require ISOs/RTOs "to amend their market rules as necessary to permit an ARC [aggregator of retail customers] to bid demand response on behalf of retail customers directly into the RTO's or ISO's organized markets, unless the laws or regulations of the relevant electric retail authority do not permit a retail customer to participate."[24] Similar language is included in the Commission's proposed regulatory text.[25] The NOPR is clear that ARC bids must satisfy the same requirements as demand response bids from any other entity, that ARC bids need only have the opportunity to be selected (and are not guaranteed to clear the market), and that ISOs/RTOs may impose reasonable requirements, *e.g.,* with respect to creditworthiness, on ARC bidders.[26] It also specifies that ISOs/RTOs may demonstrate that their existing market rules already satisfy the NOPR's requirements.[27]

The NYISO supports the NOPR's proposals with respect to ARC bidding. The proposed criteria applicable to ARC bids[28] appear to be reasonable and the NYISO appreciates the NOPR's willingness to allow individual regions to develop region-appropriate rules. The NYISO believes that the NOPR clearly allows ISOs/RTOs to permit ARCs to participate in markets on the same terms as other demand resources, and subject to the same reasonable legal, reliability, or technical limitations. The

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24 NOPR at P 86.

25 *See* proposed Section 35.28(g)(1)(iii) of the Commission's regulations, "Commission-approved ISOs or RTOs must permit a qualified aggregator of retail customers to bid a demand response on behalf of retail customers directly into the Commission-approved ISO's or RTO's organized markets, unless the laws and regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate."

26 NOPR at P 88.

27 NOPR at P 92.

28 NOPR at P 90.

Commission should not accept proposals that would afford preferential treatment to ARCs that would not be comparable to the rules for other demand resources or generators.

Consistent with the NYISO's recommendation in Section A.1, above, the Commission should revise the proposed regulatory text in Section 35.28(g)(iii) to clarify that ARCs must also meet "applicable reliability requirements" before they are permitted to bid into ISO/RTO markets. The Commission should also clarify (g)(iii)'s reference to "organized market" to make clear that it has the same meaning as under proposed g(i).[29] Similarly, the Commission should conform (g)(iii) to (g)(i) so that g(iii) will specifically require ARCs to comply with "necessary technical requirements under the tariff." That change would ensure that ISOs/RTOs may adopt reasonable metering, verification, communications, minimum size, and other technical rules for both individual demand resources and ARCs.

Finally, in compliance with the NOPR's directive, the NYISO is participating in the ongoing IRC effort to identify common issues, best practices, and standard measurement protocols related to demand resource bidding and to demand response more generally.[30]

4. Market Rules Governing Price Formation During Periods of Operating Reserve Shortage

The NOPR proposes to require "each organized market to make a compliance filing, within six months of a final rule in this proceeding, proposing any necessary reforms to ensure that the market price for energy accurately reflects the value of such

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[29] The definition in g(i) establishes that "organized market" includes any ISO/RTO-administered market based on competitive bidding.

[30] NOPR at P 93, NOPR at P 2.

energy during periods of scarcity . . . ."[31] The NOPR was clear that an ISO/RTO could demonstrate "that its current rules do not need to be reformed because they already adequately reflect the value of energy during periods of scarcity."[32] To the extent that reforms are necessary, each region may propose reforms that best suit its circumstances.[33]

The NYISO already has established scarcity pricing rules that have been in place for years and have worked well.[34] The NYISO intends to demonstrate in its compliance filing that its rules fully satisfy the NOPR's requirements.

B. Long-Term Power Contracting in Organized Markets

There is no question that voluntarily negotiated long-term contracts are important to the smooth functioning of electricity markets. It is entirely appropriate for the NOPR to propose "reasonable steps" to encourage them. The NYISO supports this policy and will continue to be open to any suggestions arising in its stakeholder process that would advance it.

The NYISO also has no objection to the NOPR's proposal "to require that ISOs and RTOs dedicate a portion of their websites for market participants to post offers to buy or sell electric energy on a long-term basis,"[35] so long as doing so will not expose ISOs/RTOs to possible liability. The NYISO has previously explained that its stakeholders have never asked it to make its website available for such postings and it may be that few would take advantage of the opportunity that the NOPR would create.

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[31] NOPR at P 117.

[32] NOPR at P 115.

[33] NOPR at P 117.

[34] *See New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111 (2004) (accepting revisions to the NYISO's scarcity pricing rules); *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,339 (2003) (accepting scarcity pricing rules).

[35] NOPR at PP 129, 146.

Nevertheless, the NOPR's proposal is reasonable because it allows ISOs/RTOs to work with their stakeholders to develop a form of "bulletin board" that best meets their needs. As the NOPR surmises, this kind of flexible approach should produce the most useful results at minimum cost.

The NYISO strongly supports the NOPR's proposal not to make ISOs/RTOs responsible for the content of customer bulletin board postings or for other third party actions. There is no basis for imposing responsibility, or liability, on ISOs/RTOs for providing what is intended to be a simple and low cost convenience to their customers. Nor would there be any practicable way for ISOs/RTOs to protect themselves if they were subject to liability. The final rule in this proceeding should expressly allow ISOs/RTOs to post disclaimers on their websites noting that the Commission has absolved them of all potential responsibility or liability related to bulletin board postings.

The Commission should also adhere to the NOPR's proposal and not generically adopt specific rules regulating bulletin board postings, or the characteristics of bulletin boards. An overly prescriptive approach will prevent different regions from developing bulletin board procedures that efficiently serve their preferences and needs.

Finally, the NOPR noted that the Commission would consider "reasonable additional steps" to promote long-term contracting "in response to comments on this NOPR . . ."[36] The NYISO respectfully requests that the Commission not incorporate new requirements into its rules that are proposed for the first time in comments on the NOPR. Alternatively, if the Commission believes that a particular commenter's approval has merit and potentially should be added to the rules, it should provide notice of that fact

[36] NOPR at P 129.

and an opportunity to comment. Doing so would ensure due process by preventing new requirements from being incorporated into the final rule without the benefit of a complete record. If the Commission were to do otherwise, interested parties would have no way of knowing whether they should respond to what may be numerous comments suggesting new long-term contracting requirements. Nor will they know whether a response would be accepted, since the NOPR did not expressly invite reply comments. In the worst case, the final rule might impose a problematic new requirement on ISOs/RTOs that they would then be forced to challenge on rehearing during the NOPR's proposed six month compliance period. The result could be considerable uncertainty and difficulty for ISOs/RTOs trying in good faith to comply with the Commission's regulations.

C. Market Monitoring Policies

The NYISO generally supports the market monitoring-related changes that the Commission proposes in the NOPR. Its comments in this area only address the structure and reporting obligations that apply to ISOs and RTOs with both internal and external market monitors.

The NOPR recognizes the value of implementing a "hybrid" market monitoring model[37] (that includes both internal and external market monitors) when it states that ISOs and RTOs with both internal and external market monitors may continue to have their internal market monitor report to management, so long as the external market monitor[38] reports directly to the ISO or RTO's Board of Directors. This reporting structure is already in place in New York.

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37 NOPR at P 187.

38 In New York, the external market monitor is called the Market Advisor.

The dual market monitor arrangement the NYISO has relied on since the inception of its markets provides a broader field of vision to the monitoring function. The entire organization benefits because it has multiple sources of input and is not limited to considering a single set of views or a particular mindset. Independence is enhanced by this structure.

The NOPR does not appear to give full and adequate credit to all of the independence benefits that can be derived from a carefully crafted division of responsibilities between internal and external market monitors. Properly structured, with responsibilities allocated appropriately between the two monitors, the use of internal and external market monitors can address the independence issues identified in the NOPR, including the Commission's desire to ensure that tariff administration duties not impair market monitors' ability to independently review market outcomes.

In New York, the internal market monitor performs tariff administration functions, including generator reference level development and mitigation, which provide it with detailed insights into the costs that affect NYCA generators offers. Further, the internal market monitor is intimately familiar with how the NYISO's market software operates. Due in significant part to its implementation of generator reference levels, the NYISO's internal market monitor has a detailed understanding of the numerous different penalty structures that may affect gas-fired New York Control Area ("NYCA") generators at times when both electric and natural gas load are high. The internal market monitor's daily interaction with owners of New York generation as part of its implementation of the reference level/mitigation function provides valuable insights that inform its review of proposed market rules for potential design flaws. This knowledge also enhances the internal market monitor's review of market participant behavior for possible abuse of market rules. Among the internal market monitor's strengths are its attention to the finer details of implementing new market rules and its understanding of the cost structures that drive offering behavior.

The NYISO relies on its external market monitor to take a longer-term perspective in its studies and analysis, and to study the interaction between the various markets that the NYISO operates (energy, ancillary services, capacity, transmission congestion contracts). The external market monitor can also be a valuable resource when the NYISO is exploring the interaction between New York's market rules and those of its neighbors. The external market monitor reports directly to the NYISO's Board of Directors and has, in the past, been assigned to review and report on whether or not the NYISO's implementation of its Market Mitigation Measures[39] and Market Monitoring Plan[40] conform with the Tariff requirements.

Because the NYISO's internal and external market monitors bring different perspectives to their review of a market rule, potential problem, or questionable market participant behavior, the NYISO as a whole is able to view these issues from a broader perspective. The NYISO does not think the Commission intended to draw a "bright line" in its new rules that would constrain the NYISO's ability to analyze and react to possible market concerns or potential market enhancements.

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[39] The NYISO's Market Mitigation Measures are set forth in Attachment H to its Market Administration and Control Area Services Tariff.

[40] The NYISO's Market Monitoring Plan is a stand-alone Commission accepted document. The NYISO expects that the terms and conditions set forth in its Market Monitoring Plan, as modified to effectuate the market monitoring structure proposed below, will be transferred to its Market Administration and Control Area Services Tariff as part of the filing that the NYISO submits to achieve compliance with the rules that result from the NOPR.

The Commission expresses concern[41] that assisting an ISO or RTO in tariff administration functions, such as mitigation, could weaken the market monitor's independence and states that freeing a market monitor from tariff administration duties will enable it to more objectively monitor the markets, without the bias that might arise from involvement in tariff administration. The NYISO's external market monitor does not implement mitigation; rather it is and will continue to be responsible for reviewing the internal market monitor's implementation of the NYISO's Market Mitigation Measures. The external market monitor similarly reviews the NYISO Operations Department's implementation of the commitment and dispatch rules.

Aside from the synergies the NYISO achieves because its internal mitigation and monitoring functions are performed by a single department, the NYISO estimates that splitting its internal market monitor into two separate groups, with one group responsible for mitigation and the second group responsible for performing the market monitoring functions that the Commission identifies in paragraph 198 of the NOPR, would require five to eight additional staff members to duplicate needed areas of expertise in both of the newly formed departments.

Instead of splitting the NYISO's internal market monitor into two separate functional groups, the Commission's independence goals can be achieved by appropriately assigning functional roles between its internal and external market monitors. The NYISO requests that the Commission confirm that the "hybrid" structure proposed below can satisfy the NOPR's requirements:

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[41] NOPR at P 207.

First, the internal market monitor will continue to report to NYISO management, while the external market monitor will continue to report to the NYISO's Board of Directors.

Second, the external market monitor will be given sole responsibility for identifying and notifying the Commission's Office of Enforcement staff of instances in which the NYISO's behavior may require investigation.

Third, in order to permit the external market monitor to monitor the NYISO's administration and implementation of its Tariffs effectively, the NYISO will work with its external market monitor to determine if its direct access to market data is adequate, or if it needs to be supplemented. In addition, the external market monitor will be given authority to require NYISO departments to provide requested data.

Fourth, the external market monitor will be given responsibility for assessing the effectiveness of the NYISO's Market Mitigation Measures, while the existing internal market monitoring group will continue to perform tariff administration duties, including mitigation.[42]

Fifth, the external market monitor will assume the primary role of reviewing and reporting on the performance of the wholesale markets, with input provided by the internal market monitor and other ISO/RTO staff prior to publication to ensure factual accuracy.

Sixth, the internal and external market monitors will share responsibility for monitoring the actions of participants in the NYISO markets and for identifying and

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42 The external market monitor presently plays a consultative role in certain aspects of the NYISO's tariff administration, including the development of generator reference levels that are used to perform mitigation. *See e.g.*, sections 3.3.1 of the Market Mitigation Measures. Permitting the external market monitor to continue to review and provide feedback on reference level determinations made by the internal market monitor would enhance the NYISO's ability to comply with its Market Mitigation Measures.

notifying the Commission's Office of Enforcement staff of instances in which a market participant's behavior may require investigation.

Finally, the internal and external market monitors will also share responsibility for evaluating existing and proposed market rules, tariff provisions and market design elements for their effectiveness, and for recommending market rule and tariff changes. The external market monitor will provide an independent and unbiased perspective, while the internal market monitor, with the experience and knowledge gained from its tariff administration functions, will have greater familiarity with the details of how the NYISO's internal software operates and may be better able to comment from a practical, implementation perspective.

The NYISO respectfully requests that the Commission confirm that the above division of responsibilities under a hybrid market monitoring structure satisfies the NOPR's objectives.

D. Responsiveness of RTOs and ISOs to Stakeholders and Customers

The NYISO supports the Commission's policy of ensuring that ISO/RTO boards and officers are responsive to customers and other stakeholders. The NYISO also supports the NOPR's four proposed "responsiveness criteria" and the proposed regulatory text related to them. The NYISO also has no objection to the proposed requirement that all ISOs/RTOs post a mission statement or charter on its website setting forth its guiding principles and commitment to consumers. The NYISO's mission statement is already posted on its website.

The NYISO appreciates the NOPR's willingness to allow ISOs/RTOs to demonstrate that they already satisfy the Commission's standards.[43] As the NYISO explained in detail in its ANOPR comments, it has a well established "shared governance" model that provides for effective stakeholder input and direct stakeholder access to the NYISO Board. Shared governance involves stakeholders in decision-making, without compromising the Board's independence or effectiveness.[44] The NYISO currently anticipates, subject to further stakeholder discussions and possible additional enhancements, that its eventual compliance filing will show that its shared governance system meets all of the Commission's requirements.

More specifically:

Inclusiveness: Shared governance ensures that "any customer or stakeholder affected by the operation" of the NYISO "is permitted to communicate its views to the ISO Board." The NYISO currently holds, and has held since its inception, monthly "Liaison Committee" meetings that provide stakeholders with a regular opportunity to communicate directly with the Board without "filtering" by NYISO management. The NYISO also sponsors an annual joint Board/Management Committee meeting and retreat which facilitates further communication and gives the NYISO Board and stakeholders an informal opportunity to exchange views and ask questions. Aggrieved stakeholders may also appeal any Management Committee action directly to the Board. In addition, stakeholders have the ability to, and have effectively, expressed their collective

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[43] NOPR at P 276.

[44] *See New York Independent System Operator, Inc.*, Response to the Commission's June 22, 2007 Advanced Notice of Proposed Rulemaking, Docket No. RM07-19 (Sep. 14, 2007). ("NYISO ANOPR Comments") 5-15.

preferences through their votes on proposed tariff revisions and their input into the NYISO's director selection and budgeting processes.

Fairness in Balancing Diverse Interests: The NYISO's existing shared governance framework ensures "that the interests of customers or other stakeholders are equitably considered." The NYISO has previously explained that voting rights are distributed among its stakeholders in a manner that was carefully established, after years of negotiation and approval by the Commission, to prevent "any single stakeholder category" from dominating the decision making process. In fact, the NYISO's requirement that a measure must have the support of 58% of the voting weight of its stakeholders makes certain that even two stakeholder sectors cannot dominate. That is, at least two sectors and some members of a third sector must support a measure for it to pass. There is no evidence that the NYISO's stakeholder processes are unbalanced and the NYISO has refuted all allegations to the contrary in this proceeding.[45]

Representation of Minority Positions: Minority interests already have direct access to the NYISO Board through the appeals process and the Liaison Committee. The NYISO staff alerts the Board in the normal course when there is significant opposition to initiatives or proposals. The NYISO would have no objection to a requirement that it adopt internal procedures requiring minority positions to be communicated to the Board at the same time as majority positions.

Ongoing Responsiveness: The NYISO's shared governance system inherently provides for "stakeholder input into RTO or ISO decisions" because stakeholders must vote to approve tariff filings and have influence over director selections and the

[45] *See* NYISO ANOPR Comments at 11.

budgeting process. The NYISO conducts regular customer satisfaction surveys that provide critical feedback. In addition, the Liaison Committee process provides a mechanism for the Board to give direct feedback to stakeholders by facilitating direct communications between stakeholders and the Board.

The NYISO will provide additional explanation and detail in its compliance filing.

The NYISO believes that its existing governance practices are, at a minimum, consistent with, and are in many ways superior to, either the “hybrid board” or the “board advisory committee” models described in the NOPR. In particular, shared governance resolves what the ANOPR described as the “natural tension” between the Board’s independence and responsiveness without any of the potential dangers associated with hybrid boards. Shared governance also empowers stakeholders more completely than “the board advisory” model, which provides for access to the Board but not for stakeholder voting.

The NOPR is clear that the hybrid board and board advisory committee models are merely representative examples and that ISOs/RTOs may pursue alternatives in their compliance filings.[46] The Commission should reject any comments that would force ISOs/RTOs to adopt one of the two models or impose “standardized” requirements. Allowing regional variations is the right approach and the one most likely to result in stakeholder satisfaction.

[46] NOPR at P 277.

Finally, the NYISO wishes to respectfully reiterate[47] its support for Commissioner Kelly's view that a "hybrid board" model is likely to be unsound and unworkable.[48] As a practical matter, this should not be a problem so long as each ISO/RTO region is truly free to pursue other compliance arrangements. Other ISO/RTO regions should be allowed to voluntarily propose a hybrid board structure but no region should be forced to accept it.

III. COMPLIANCE PROCEDURES

The NOPR proposes to give ISOs/RTOs six months to one year from the date that a final rule is issued to make compliance filings on various issues related to the four areas targeted for reform. The NYISO supports this proposal and urges the Commission to reject any proposal calling for shorter periods. Given the number of changes to market software, billing practices, and, in some cases, organizational functions, that would be required, along with the need to consult with stakeholders on regional market design issues, the NOPR's proposed deadlines represent the minimum time that should be allowed to prepare compliance filings.

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47 *See* ANOPR Comments at 6.

48 *See* NOPR, Kelly, concurring in part and dissenting in part at 3-4.

WHEREFORE, for the foregoing reasons, the NYISO respectfully asks that the Commission adopt the recommendations contained in these comments as it formulates its final rule in this proceeding.

Respectfully submitted,

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