

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

**Electricity Market Design and Structure ) Docket No. RM01-12-000**

**REQUEST FOR LEAVE TO SUBMIT COMMENTS AND COMMENTS  
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.  
ON THE FORMATION OF A STANDARDS DEVELOPMENT ORGANIZATION  
FOR THE WHOLESALE ELECTRIC INDUSTRY**

The New York Independent System Operator, Inc. (“NYISO”) hereby respectfully submits its comments on the formation of an industry organization to develop business practice standards and related communications protocols for the wholesale electric industry, pursuant to the Commission’s December 19, 2001 Order in the above-captioned proceeding.<sup>1</sup>

The North American Electricity Standards Board (“NAESB”) proposed Wholesale Electric Quadrant (“WEQ”) is the right vehicle to establish commercial standards. Although the industry attempt to develop a consensus “joint filing” to establish the WEQ failed at the last moment, a great deal of progress was nevertheless made. The Commission should provide guidance on the relatively small number of unresolved issues that prevented a final agreement from being reached and then permit the industry to finalize a consensus proposal. In particular, the Commission should indicate that it expects the WEQ to coordinate its activities with NERC, which will continue to set reliability standards, rather than supplanting NERC and setting reliability standards itself. The Commission should also specify that Independent System Operators’ (“ISOs”) and Regional Transmission Organizations’ (“RTOs”) dual responsibilities

---

<sup>1</sup> *Electricity Market Design and Structure*, 97 FERC ¶ 61,289 (2001) (“December 19 Order”).

as grid operators and market administrators give them a unique perspective that should be represented in a separate voting “segment” within the WEQ structure. Finally, the Commission should clarify that just as the Commission will balance the need for standardization against the need to permit regional differences and market innovation in developing market rules,<sup>2</sup> the WEQ should seek to develop business practice standards that are sufficiently flexible to accommodate legitimate regional variations.

## **I. DESCRIPTION OF THE NYISO**

The NYISO began operations in 1999 as a Commission-approved ISO. The Commission conditionally authorized the NYISO in June 1998<sup>3</sup> and conditionally approved its market rules in January 1999.<sup>4</sup> The NYISO’s mission is to provide non-discriminatory open-access transmission service, to maintain the reliability of the New York State transmission system and to administer efficient markets for day-ahead and real-time energy, regulation, reserves, and installed capacity. The NYISO also administers a congestion management system based on financial transmission rights and auctions for transmission congestion contracts. NYISO staff works continuously with stakeholders to improve the existing market design and to create new market enhancements.

---

<sup>2</sup> *Working Paper on Standardized Transmission Service and Wholesale Electric Market Design* at 1.

<sup>3</sup> *Central Hudson Gas & Electric Corp., et al.*, 83 FERC ¶ 61,352 (1998); *order on reh’g*, 87 FERC ¶ 61,135 (1999).

<sup>4</sup> *Central Hudson Gas & Electric Corp., et al.*, 86 FERC ¶ 61,062 (1999); *order on reh’g*, 88 FERC ¶ 61,138 (1999).

## **II. REQUEST FOR LEAVE TO SUBMIT COMMENTS**

To the extent necessary, the NYISO requests leave to submit comments in this proceeding.<sup>5</sup> The December 19 Order directed the “industry” to “agree on a single standards organization to develop wholesale electric standards by March 15, 2002,” but did not expressly solicit comments from interested industry participants. Nevertheless, it appears that many parties in this proceeding have treated March 15 as a deadline for filing comments and have made filings accordingly. The NYISO therefore respectfully asks that insofar as the Commission considers the comments filed by other parties that it consider the NYISO’s comments as well.

Because the Commission has not actually set a deadline for comments on a standards development organization for the wholesale electric industry, the NYISO does not believe that it is required to request leave to submit these comments out of time. However, in the event that the Commission does consider the NYISO’s comments to be untimely, the NYISO requests that the Commission accept them. The NYISO had intended to make a filing endorsing the proposed joint filing, which appeared very likely to be submitted as an industry consensus document until the eve of the filing deadline. The NYISO was surprised by the last minute breakdown and needed a few days to formulate comments given the abrupt change in circumstances.

## **III. BACKGROUND**

Even before the Commission issued the December 19 Order, industry participants took initiatives to establish a process to develop commercial standards for the wholesale electric industry to carry out the Commission’s policies and framework for the industry as set forth in

---

<sup>5</sup> The NYISO is already a party in Docket No. RM01-12-000 and is therefore not filing a

Order No. 2000 and subsequent RTO orders, and in connection with the Commission's ongoing efforts to establish a standardized market design. The most prominent of these initiatives included:

- The Gas Industry Standards Board's ("GISB") transformation into NAESB and proposal to establish a new WEQ;
- NERC's efforts to develop its Wholesale Electric Standards Model through a stakeholder process; and
- NERC's "Electronic Scheduling Collaborative" which considered the development of business practices to support OASIS Phase II, under existing, non-standardized, market structures.

After the Commission issued the December 19 Order, industry participants intensified their efforts to develop a consensus that would address the development of business practice standards and communications protocols, and ensure the coordination of that process with the development of NERC's reliability standards. The most prominent of these efforts was the Edison Electric Institute's ("EEI") facilitation of the "Joint Industry Group on the Formation of a Standards Development Organization for the Wholesale Electric Industry." The NYISO participated actively in this process. After an extensive series of industry meetings to reach consensus, a proposal was formulated in a draft filing ("Joint Industry Filing"). The Joint Industry Filing appeared to enjoy broad support, but the seeming consensus unexpectedly fell apart just before the Commission's filing deadline. Various industry participants have responded by filing proposals of their own. Nevertheless, the NYISO believes that many stakeholders

---

motion to intervene herein.

generally support the Joint Industry Filing and that more would endorse it if the Commission were to resolve a few outstanding questions.

#### **IV. THE COMMISSION SHOULD OFFER GUIDANCE ON CONTROVERSIAL ISSUES INSTEAD OF ATTEMPTING TO DEVELOP BUSINESS PRACTICE STANDARDS ITSELF**

The December 19 Order warned that “[i]f the industry does not agree, by March 15, 2002, on a single standards organization, we will institute our own procedures either to choose an organization to develop such standards or to develop the standards ourselves.”<sup>6</sup> The Commission should not, however, react to the industry’s failure to complete work on a consensus proposal to establish a standards-setting organization by attempting to develop standards of its own.

The NYISO suspects that relatively few issues will be raised by commenters in this proceeding and that the two most important ones will pertain to: (i) NERC’s role; and (ii) the governance of the standards-setting organization. If the Commission makes the key policy calls on these issues and directs the industry to resume its consensus-building effort, it is likely that a consensus proposal will emerge. This approach would be faster and less burdensome for stakeholders than establishing standards through an administrative process or, even worse, through litigation. Moreover, the industry’s greater resources and technical expertise make it better suited than the Commission to do the highly detailed work necessary to create a comprehensive set of commercial standards and communications protocols.

Finally, because so much progress has already been made, and because the standards development organization will not be able to begin its work until the Commission has finalized

---

6 December 19 Order, *slip op.* at 2.

its standard market design principles, there is no reason not to give the industry a reasonable amount of additional time to come to agreement, *e.g.*, 45 days, after the Commission addresses the remaining controversial issues.<sup>7</sup> As was noted above, the industry came very close to submitting a joint filing proposing the establishment of a WEQ. The NYISO believes that it would be premature to discard the work that has been done to date and that the latest draft of the joint filing<sup>8</sup> could be a very good starting point for further industry discussions.

**V. THE WEQ SHOULD ESTABLISH COMMERCIAL STANDARDS AND SHOULD COORDINATE ITS ACTIVITIES WITH NERC, WHICH SHOULD CONTINUE TO ESTABLISH RELIABILITY STANDARDS**

The NYISO supports the establishment of single nationwide organization to develop business practice standards in a manner that is coordinated with standards that affect the reliability of the interconnected North American grid. As the Joint Industry Filing contemplated, NAESB's proposed WEQ should be the framework for developing wholesale electric business practice standards and related communications protocols. These standards must conform to standard market design principles developed by the Commission and to reliability standards developed by NERC. The NYISO agrees with the Joint Industry Filing that commercial and reliability practices are interdependent and that there must be a continuous effort to maintain an equitable balance between commercial and reliability interests.

---

<sup>7</sup> The December 19 Order asserted that business practices and communication standards must be developed as soon as possible after the Commission develops its market design principles. Given that the Commission has just unveiled many, but not all, of its market design principles in its recently issued *Working Paper*, and will not finalize these principles until the end of the year, there is no need for the Commission to take an aggressively prescriptive approach at this time.

<sup>8</sup> The latest draft is attached to the March 15, 2002 *Comments of the National Association*

The NYISO does not agree with speculation that the NAESB WEQ and NERC will be unable to cooperate or that there must be a single organization responsible for developing both commercial and reliability standards. The NERC Board of Trustees recently issued a resolution confirming its commitment to maintaining the reliability of the North American electric grid and emphasizing that NERC would focus its mission on the development of core reliability standards. The NYISO agrees with NERC that “there is a paramount public interest in a reliable bulk power system in North America and that a single organization should have as its principal mission maintaining the reliability of that system.” In view of NERC’s technical expertise, historical role, and independent governance structure, the NYISO agrees that NERC, and its regional reliability councils, should continue to be responsible for establishing reliability standards in North America. It would not be prudent to strip NERC of this responsibility or to disrupt both NERC’s and the NAESB’s activities by forcing them to form a single organization.

However, in developing reliability standards NERC must coordinate with the NAESB WEQ to ensure that market-based solutions are instituted wherever possible. There should be formal coordination arrangements between the two organizations to prevent them from working at cross-purposes and to facilitate the prompt resolution of disagreements. The NYISO believes that this approach is most likely to be successful and less likely to result in disputes than proposals that would make NERC responsible for reliability policies, but limit its input into the creation of reliability practices.

## **VI. GOVERNANCE ISSUES**

Consistent with the Joint Industry Filing, the NYISO supports a segmented governance

structure that provides for balanced and inclusive participation in the standards development process. Any governance structure must be designed to prevent any single segment from dominating the process or blocking the approval of a standard. In addition, the NYISO agrees with the basic principles for governance and voting set forth in the Joint Industry Filing.

Specifically:

- the voting segment structure should support a reasonably efficient standards development process that includes appropriate opportunities for appeal;
- every stakeholder group with a distinct interest in wholesale electric standards should have the opportunity to provide input to and vote in the standards development process;
- there should be an equitable number of segments representing each major interest.

One problem with the final version of the Joint Industry Filing is its failure to identify the voting segments or to specify how the segments would be populated. These are difficult and controversial issues where Commission guidance could be helpful.

In particular, the NYISO would urge the Commission to require that there be a segment populated entirely by ISOs and RTOs that have both grid operation and market administration responsibilities. These dual responsibilities give ISOs and RTOs a unique perspective and unique expertise that justifies placing them in a different segment than, for example, public interest groups or transmission-owning utilities. It is true that many market participants opposed creating a separate ISO/RTO segment, but this is an instance where no market participant had an incentive to reduce its own representation (however slightly) by giving ISOs and RTOs appropriate representation. Under the circumstances, it would be appropriate for the Commission to override market participants' self-interest and permit the entities that will



administer wholesale electricity markets to have an adequate say in the development of commercial, communications and software standards that will affect their operations so substantially.

**VII. THE COMMERCIAL STANDARDS ESTABLISHED BY THE WEQ MUST BE SUFFICIENTLY FLEXIBLE TO ACCOMMODATE LEGITIMATE REGIONAL VARIATIONS IN MARKET RULES**

The NYISO has consistently urged the Commission to leave room for legitimate regional variations to standardized market rules when such variations are necessitated by actual regional differences.<sup>9</sup> Similarly, the NYISO has argued that the establishment of inflexible national business practice standards could result in lowest common denominator commercial standards that will not serve all regions well and that might “conflict with, or prevent the use of, region-specific market rules that legitimately vary from national standards.”<sup>10</sup>

It appears that the Commission has recognized the need to find the proper balance between the benefits of standardizing as much as possible and the costs of imposing lowest common denominator standards on regions with special needs when it comes to market rules. For example, the first paragraph of the Commission’s recent working paper on standardized market designs and transmission states that “[a] key challenge will be to balance the need for standardization for a seamless transmission grid with streamlined operations and costs with the need to permit regional differences and market innovation.”<sup>11</sup>

However, the NYISO believes that it would be helpful if the standards development

---

<sup>9</sup> See, e.g., *Comments of the New York Independent System Operator, Inc.*, Docket No. RM01-12-000 (December 17, 2001) (“NYISO Comments”) at 1, 7-8.

<sup>10</sup> NYISO Comments at 13.

<sup>11</sup> *Working Paper on Standardized Transmission Service and Wholesale Electric Market Design* at 1.

organization were also directed to try to strike the same balance. At a minimum, the standards setting organization should not be permitted to establish inflexible standard business practices that have the effect of compelling a RTO to use a particular market rule when a demonstrated region-specific need justifies the use of an alternative rule. Absent this protection, some participants may try to inappropriately use the standard-setting process to lock RTOs into sub-optimal lowest common denominator rules when doing so serves their own interests.

### **VIII. CONCLUSION**

The NYISO believes that it is still possible for the industry to achieve a consensus on the creation of a wholesale electric industry standards development organization, provided that the Commission offers guidance on certain key issues. The Joint Industry Filing is a viable foundation upon which such a standards setting organization could be built. The NYISO is committed to working with the Commission and with all industry participants to develop

commercial standards that will support efficient wholesale markets in a manner that is consistent with reliability requirements and critical region-specific needs.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By \_\_\_\_\_  
Counsel

Arnold H. Quint  
Ted J. Murphy  
Hunton & Williams  
1900 K Street, N.W.  
Washington, D.C. 20006  
Of Counsel

March 20, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket No. RM01-12-000 in accordance 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 20th day of March, 2002.

---

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