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October 28, 2009

Via Hand Delivery

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

**Re: Joint Compliance Filing of the New York Independent System Operator, Inc. and
the New York Transmission Owners, Docket No. ER04-449-___**

Dear Secretary Bose:

Pursuant to the Commission's June 30, 2009 order¹ in the above captioned proceeding, the New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners ("NYTOs")² (collectively, the "Joint Filing Parties") hereby respectfully submit amendments to the NYISO's Open Access Transmission Tariff ("OATT") and the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") to implement the External Capacity Resource Interconnection Service Rights proposal ("External CRIS Rights Proposal" or "Proposal"). The June Order accepted, in principle, the External CRIS Rights Proposal and directed the Joint Filing Parties to amend the NYISO OATT and Services Tariff accordingly.³

¹ *New York Independent System Operator, Inc., et al.*, 127 FERC ¶ 61,318 (2009) ("June Order").

² Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. ("Con Edison"), LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc. ("O&R"), Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid. The NYTOs reserve the right to comment separately on this filing. While LIPA and NYPA are not "public utilities" as defined under Section 201 of the Federal Power Act, and thus are exempt from the requirement to file these tariff amendments, LIPA and NYPA were integrally involved with the FERC-jurisdictional NYTOs in the development of the instant filing and support its filing.

³ June Order at P 42.

The Joint Filing parties submit that the tariff sheets proposed herein are just, reasonable, and not unduly discriminatory and thus respectfully request that the Commission accept them for filing. Additionally, the Joint Filing Parties respectfully request that the Commission issue an order in this proceeding by January 15, 2010 and grant a November 1, 2009 effective date, as explained in section IV of this letter.

I. LIST OF DOCUMENTS SUBMITTED

The NYISO submits the following documents:

1. This filing letter;
2. Clean and blacklined versions of the modifications to Attachment S of the NYISO OATT ("Attachment I");
3. Clean and blacklined versions of the modifications to Attachment X of the NYISO OATT ("Attachment II");
4. Clean and blacklined versions of the modifications to Section 5.12 of the NYISO Services Tariff ("Attachment III");
5. Clean and blacklined versions of the modifications to Attachment Y of the NYISO OATT ("Attachment IV"); and
6. A List of Additional Individual Company Representatives for the NYTOs ("Attachment V").

II. BACKGROUND

On January 20, 2004, the Joint Filing Parties submitted a filing ("January 2004 Filing") in compliance with Order No. 2003 which required the filing of standard interconnection procedures and a standard interconnection agreement for large Generators.⁴ Order No. 2003 contemplated two levels of interconnection service, Energy Resource Interconnection Service and Network Resource Interconnection Service. On August 6, 2004, the Commission conditionally accepted the January 2004 Filing, but found Order No. 2003 required two levels of interconnection service, including one that incorporates a deliverability component. The Commission acknowledged that unique regional differences existed within the NYCA that

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. P 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. P 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. P 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. P 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

needed to be taken into account and, therefore, allowed the Joint Filing Parties time to develop a consensus proposal through the NYISO's stakeholder process.

On October 5, 2007, the Joint Filing Parties submitted their Deliverability Plan, which had broad stakeholder support, for Commission approval. The Deliverability Plan proposed to provide an interconnecting Generator the choice of two categories of interconnection service: (1) Energy Resource Interconnection Service ("ERIS"); and (2) Capacity Resource Interconnection Service ("CRIS"). On March 21, 2008, the Commission "approved, in principle, the conceptual framework proposed in the filed plan" and directed further modifications to the proposal and the filing of tariff revisions to implement the plan.⁵ On August 5, 2008, the Joint Filing Parties filed their proposed amendments to the NYISO tariffs ("Deliverability Filing").

On January 15, 2009, the Commission conditionally accepted the Deliverability Filing and directed further compliance filings.⁶ The January Order found that the proposed tariff revisions did "not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust or unreasonable"⁷ but ordered several modifications and a clarification regarding the deliverability treatment of External Resources. Specifically, the January Order indicated that the Commission had concerns that the deliverability test did not "take into account existing capacity resources" and may discourage the use of External Resources to fulfill Installed Capacity ("ICAP") requirements in the NYISO market.⁸

On May 4, 2009, the Joint Filing Parties filed a compliance filing ("May Filing") in response to the January Order. The May Filing included the External CRIS Rights Proposal as an attachment. The May Filing explained that the Proposal would provide entities that want to provide External ICAP the opportunity to obtain a long-term determination of deliverability which would avoid the otherwise annual re-evaluation of deliverability applied prior to setting import limits. On June 30, 2009, the Commission issued an order accepting the Joint Filing Parties' tariff modifications and accepting in principle the External CRIS Rights Proposal. The June Order directed the Joint Filing Parties to file tariff revisions to implement the External CRIS Rights Proposal within 120 days.

⁵ *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,267 at P 1 (2008).

⁶ *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 (2009) ("January Order").

⁷ January Order at P 26.

⁸ January Order at PP 76-77.

III. PROPOSED TARIFF AMENDMENTS

The External CRIS Rights Proposal addresses the Commission's concern about the ability of External Resources to supply capacity to the NYCA on a long-term basis.⁹ The Proposal provides entities that want to provide External ICAP to the NYCA with the opportunity to obtain a long-term determination of deliverability ("External CRIS Rights") in order to avoid requirements which would subject such resources to an annual re-evaluation process. The proposed revisions represent a consensus among the stakeholders on concepts set forth in the tariff language required to implement the Proposal.

A. Scope of External CRIS Rights

A definition of External CRIS Rights has been added to Attachment S and Attachment X of the OATT. External CRIS Rights are defined as:

A determination of deliverability within a New York Capacity Region, awarded by the NYISO for a term of five (5) years or longer, to specified Megawatts of External Installed Capacity that satisfy the requirements set forth in Section VII.K

A new Section VII.K in Attachment S of the OATT provides a basic description of External CRIS Rights and their scope. Once an entity obtains External CRIS Rights, the External ICAP associated with those rights will not be subject to any import deliverability tests that are applied annually to External ICAP as a part of the annual import limit setting process. Once an entity obtains External CRIS Rights for a quantity of MW, the deliverability of those MW will not be re-evaluated unless the rights terminate.

B. Requirements for Qualifying Entities

Entities can request External CRIS Rights if they make a long-term commitment of five years or longer, to supply ICAP to New York. The new section VII.K to OATT Attachment S sets forth the procedures that entities must follow to request and obtain the long-term determination of deliverability for its External ICAP (*i.e.*, External CRIS Rights). External CRIS Rights may be utilized by entities supplying capacity beginning with the 2010-11 Winter Capability Period.

Subsection VII.K.1 provides that entities can request External CRIS Rights if the entity is making a long-term commitment (*i.e.*, the "Award Period"), to supply Installed Capacity in the NYISO market. The long-term commitment can be based either on an executed bilateral contract ("Contract Commitment") or another kind of commitment ("Non-Contract

⁹ January Order at P 78.

Commitment"). Under both approaches, the commitment must be for all months of the Summer Capability Period and may include, but is not required to include, any or all months of the Winter Capability Period.¹⁰

Subsection VII.K.1.a establishes the provisions applicable to entities making Contract Commitments. Subsection VII.K.1.a specifies that entities making Contract Commitments must have an executed bilateral contract to supply a specified number of MW of External ICAP to a Load Serving Entity or Installed Capacity Supplier for an Award Period. Entities are required to own or have contract control of External ICAP to fulfill their bilateral supply contracts throughout the period. The entities must certify the bilateral supply contracts for every month of the Summer Capability Period and for every applicable Winter Capability Period month.

Subsection VII.K.1.b establishes the provisions applicable to entities making Non-Contract Commitments. Entities are required to own or have contract control of External ICAP to fulfill their Non-Contract Commitments throughout the applicable term. Entities with Non-Contract Commitments must offer the committed capacity in one or more of the Capability Period Auctions, Monthly Auctions, Spot Market Auctions, or through a bilateral contract. The summer capacity in the Summer Capability Period must be offered for every month of the period and the capacity in the Winter Capability period must be offered for every specified month.

These offers are subject to an offer cap, as explained in new Section 5.12.2.D of the Services Tariff. Under the new Section 5.12.2.D of the Services Tariff, the offer cap will be determined to be:

- (i) the higher of 1.1 times the price corresponding from the Unforced Capacity determined from the Demand Curve for that Period and for the Capacity Region in which the Interface of entry is located; and
- (ii) the most recent auction clearing price (a) in the External market supplying the External Installed Capacity, if any, and if none, then the most recent auction clearing price in an External market to which the capacity may be wheeled, less

¹⁰ The period must include all months of the Summer Capability Periods for the full Award Period, but does not have to include any months within the Winter Capability Period. If any months in a Winter Capability Period are included, entities must specify which Winter Capability Period months are included in the Award Period. The commitments, whether through a bilateral contract or some other type of commitment, must be for the same number of MW for all Summer Capability Periods and all specified Winter Capability Periods. The number of MW committed in the months within the Winter Capability Period must be less than or equal to the number of MW committed in the Summer Capability periods.

(b) any transmission reservation costs in the External market associated with providing the Installed Capacity, in accordance with ISO Procedures.

For Non-Contract Commitments, Subsection VII.K.1.c of OATT Attachment S establishes a financial penalty for failure to meet External ICAP commitments. Generally, entities will pay an amount equal to 1.5 times the Spot Auction market clearing price for the month associated with the failure to offer at no higher than the offer cap.

External CRIS Rights under both a Contract Commitment and a Non-Contract Commitment will be terminated when an entity fails to meet its commitment four times within the initial Award Period, or four times within each subsequent renewal period.

C. Obtaining External CRIS Rights

Entities can obtain External CRIS Rights through a one-time conversion of grandfathered rights¹¹ or by evaluating the deliverability of the applicable import in a Class Year Deliverability Study.

1. One-Time Conversion of External ICAP

Section 5.12.2.C of the Services Tariff establishes the process for one-time conversion of certain grandfathered import rights over the Quebec External Interface (via Chateauguay). Section 5.12.2.C provides that entities can request to convert to External CRIS Rights up to a maximum of 1090 MW over the Quebec External Interface (via Chateauguay), through a Contract Commitment or a Non-Contract Commitment. These converted MW will not be subject to evaluation under a deliverability study. Section 5.12.2.C indicates that requests to convert must be received by the NYISO by February 1, 2010 and specifies the information that must be included in such requests.

In the event that conversion requests exceed the 1090 MW maximum, Section 5.12.2.C provides that the NYISO will allocate the 1090 MW based on a formula that considers both the requested MW and requested Award Periods of each request. Separate allocations will be calculated for the Summer and Winter Capability Periods. Where the allocated number of MW for a requesting entity is less than the entity's specified minimum request, the NYISO will remove that request and recalculate the allocations for the remaining entities. The process will

¹¹ These grandfathered import rights are 1090 MW of installed capacity imports which have historically taken place over the Quebec External Interface (via Chateauguay). June Order at P 43. The Commission found that temporarily grandfathering these import rights was just and reasonable because it ensured that the deliverability requirements did not discourage the use of external resources to satisfy installed capacity requirements in the NYISO market. *Id.* at P 45. The Commission also held that this complied with prior orders finding that the deliverability requirements should not interfere with existing or settled arrangements. *Id.* at P 43, citing, *New York Independent System Operator Inc.*, 122 FERC ¶ 61,267 at P 63-64 (2008).

continue until the allocated number of MW meet or exceed the specified minimums for each remaining entity.

Any portion of the previously-grandfathered 1090 MW over the Quebec External Interface (via Chateauguay) that is not converted to External CRIS Rights under the process described above will no longer be treated as grandfathered from the deliverability requirement. Previously grandfathered rights converted to External CRIS Rights but then terminated will no longer be grandfathered from deliverability.

Under current tariff provisions, 1090 MW of imports over the Quebec External Interface (via Chateauguay) are grandfathered from deliverability through the end of the 2010 Summer Capability Period. Accordingly, the External CRIS Rights converted from the grandfathered 1090 MW will become effective starting with the 2010-11 Winter Capability Period.

2. Evaluation Through a Class Year Deliverability Study

Section VII.K.1.d establishes the process through which an entity can request that a quantity of External ICAP be evaluated in the next Class Year Deliverability Study. Entities with either Contract or Non-Contract Commitments can seek to obtain External CRIS Rights using the Class Year Deliverability Study process. Class Year 2010, which is scheduled to commence on March 1, 2010, will be the first Class Year in which entities can request External CRIS Rights.

Section VII.K.1.d provides that entities must submit a completed External CRIS Rights Request to begin the process. The deliverability of the imports will be evaluated during the relevant Class Year Deliverability Study with other members of the Class Year, including proposed internal generators. The requested External CRIS Rights and proposed generators would have equal access to any transmission capability for deliverability test purposes found to be available in that Class Year Deliverability Study. Like internal generators, if an import of capacity over the relevant External Interface is found to be undeliverable, the NYISO would identify appropriate System Deliverability Upgrades ("SDUs") that would make the import deliverable. Entities would, as with internal projects, have the option to accept the deliverable MW and cost allocation for any SDUs. Imports obtain the External CRIS Rights upon acceptance of the deliverable MW or any SDU cost allocation. In addition to satisfying the deliverability requirements, External CRIS Rights will be awarded through a Class Year Deliverability Study only to the extent that the MWs requested, when considering previously awarded External CRIS Rights and grandfathered rights over the relevant External Interface, do not exceed the import limit set at that time for that External Interface.

Section VII.J has been modified to indicate that External ICAP associated with External CRIS Rights will be subject to the deliverability test in sections VII.H and VII.I of Attachment S.

OATT Attachment X has been amended to include an External CRIS Rights request form to be completed by entities requesting such rights. Additionally, a new Facilities Study Agreement for External CRIS Rights has been added to OATT Attachment X.

D. Initial Term and Renewal of External CRIS Rights

A new Section IX.C.2 in Attachment S of the OATT has been added which includes provisions on the initial term and the process for renewal of External CRIS Rights. Renewals of External CRIS Rights pursuant to this section would not require any further evaluation of deliverability of the External ICAP associated with the Contract Commitment or Non-Contract Commitment.

Subsection IX.C.2.a provides that the initial term will be for an Award Period of no less than five years. Subsection IX.C.2.b establishes the ability for External CRIS Right holders to renew those rights for one or more subsequent terms. External CRIS Rights obtained pursuant to a Contract Commitment will be renewable once the contract relied on to create the rights is renewed: (1) without any further deliverability evaluation; and (2) for the same term. For External CRIS Rights obtained pursuant to a Non-Contract Commitment, entities can renew for no less than five years, as long as they continue to: (1) satisfy the applicable offer commitment for, at a minimum, the Summer Capability Period; and (2) comply with the offer cap.

Entities seeking renewal must apply to the NYISO on or before either: (1) six months before the expiration of the Contract Commitment or Non-Contract Commitment of the rights to be transferred; or (2) one month prior to the Study Start Date for the Annual Transmission Reliability Assessment that is prior to the start of the last Summer Capability Period within the current Award or Renewal Period.

Subsection IX.C.2.c. provides that if External CRIS Rights have not been renewed for an additional term, they will terminate at the end of the effective Award Period or renewal of an Award Period.

E. Transfer of External CRIS Rights

A new Section IX.F in Attachment S of the OATT describes the terms and conditions under which External CRIS Rights holders may transfer their rights. External CRIS Rights may be transferred if: (1) the entity to receive the rights makes a Contract Commitment or Non-Contract Commitment; (2) the External ICAP of the entity receiving the rights uses the same External Interface as the entity currently holding the rights; (3) the transfer is for the

remaining duration of the Award Period; (4) the transfer is for some, but not all MW owned by the holder, the number of CRIS MW transferred must result in both the holder and the transferee each receiving External CRIS Rights in an amount that would satisfy the Contract Commitment or Non-Contract Commitment requirements; and (5) the transfer occurs either six months before the expiration of the Contract Commitment or Non-Contract Commitment of the rights to be transferred, or one month prior to the Study Start Date for the Annual Transmission Reliability Assessment that is prior to the start of the last Summer Capability Period within the current Award or Renewal Period.

F. Representation of External CRIS Rights in Various Studies

Current section VII.H.2.h in Attachment S of the OATT includes a list of External system imports that will not be adjusted in the study model to eliminate or reduce overloads observed in the Class Year Deliverability Study. Section VII.H.2.h will be revised to add External CRIS Rights to the list of External system imports that will not be reduced.

Section 5.12.2.B of the Services Tariff addresses internal deliverability and import rights. This section has been modified to provide that External ICAP associated with External CRIS Rights shall be modeled as a part of the annual process of setting import limits, but will not be adjusted as part of the import limit-setting process.

G. Ministerial Tariff Modifications

Several modifications were required to reflect renumbering and other ministerial changes, as explained below:

1. OATT Attachment S

Current section VII.K, Cost Allocation for Highway Upgrades, has been renumbered to VII.L. A new section VII.K, CRIS Rights for External Installed Capacity, has been added. Several references to current section VII.K of Attachment S had to be updated to reflect that section's new numbering.

Current Section IX.C has been renamed "Term of CRIS Rights." The language formerly included under Section IX.C has been moved to a new subsection IX.C.1, Retaining CRIS Status. A new subsection IX.C.2, Term of External CRIS Rights, has been added.

A new Section IX.F, Transfer of External CRIS Rights, has been added.

Corresponding updates to the table of contents have been made, reflecting the addition of new sections and the renumbering of other sections.

2. OATT Attachment Y

Several references to current section VII.K of Attachment S have been updated to reflect its renumbering to VII.L.

3. Services Tariff Section 5.12.2

Current section 5.12.2 of the Services Tariff has been divided into several subsections. The language formerly included under 5.12.2 has been divided into two subsections: (1) subsection 5.12.2.A, Provisions Addressing the Applicable External Control Area; and (2) subsection 5.12.2.B, Additional Provisions Addressing Internal Deliverability and Import Rights. New subsections 5.12.2.C, One-Time Conversion of Grandfathered Quebec (via Chateaufort) Interface Rights and 5.12.2.D, Offer Cap Applicable to Certain External CRIS Rights, have been added.

IV. EFFECTIVE DATE AND REQUEST FOR ISSUANCE OF AN ORDER BY JANUARY 15, 2010

The Joint Filing Parties request that the Commission approve the proposed modifications with an effective date of November 1, 2009.¹²

Additionally, the Joint Filing Parties respectfully request that the Commission issue an order in this proceeding by January 15, 2010 to facilitate the one-time conversion of certain grandfathered import rights to External CRIS Rights, as explained in section III.C.1, above. Entities must submit their request for External CRIS Rights pursuant to this process by February 1, 2010, so the Commission's issuance of an order by January 15, 2010 will provide certainty to entities who will be participating in the one-time conversion process.

V. COMMUNICATIONS AND CORRESPONDENCE

Copies of correspondence concerning this filing should be served on:

¹² Because this is a compliance filing, the Joint Filing Parties do not believe that the prior notice requirements under Section 205 are applicable but request waiver to the extent the Commission deems it necessary to allow the requested effective date. See *Southern Co. Svs, Inc.*, 61 FERC ¶ 61,339 at 62,328-331 (1992); *order on reh'g*, 63 FERC ¶ 61,217 at 62,596 (1993) (outlining the differences between compliance filings and Section 205 filings and emphasizing that the Commission is not required to act on the former within the normal sixty day statutory period).

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VI. SERVICE

¹³ Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2009)) is requested to the extent necessary to permit service on counsel for the NYISO in both Washington, DC and Richmond, Virginia, as well as the representatives for the NYTOs.

The NYISO will electronically send a link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, to the electric utility regulatory agencies of New Jersey and Pennsylvania and the service list in this proceeding. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will also make a paper copy available to any interested party that requests one. To the extent necessary, the NYISO requests waiver of the requirements of Section 35.2(e) of the Commission's Regulations¹⁴ to permit it to provide service in this manner.

VII. CONCLUSION

Wherefore, for the foregoing reasons, the Joint Filing Parties respectfully request that the Commission take action as requested herein and accept the proposed revisions to the NYISO OATT and Services Tariff effective November 1, 2009.

Respectfully submitted,

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¹⁴ 18 C.F.R. § 35.2(e).

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