

February 5, 2003

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FILE NO: 55430.000044

**BY HAND**

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Compliance Filing of New York Independent System Operator, Inc.  
in Docket No. ER03-200-001**

Dear Ms. Salas:

In its January 21, 2003, Order Conditionally Accepting Tariff Revisions<sup>1</sup> (“January 21 Order”) in the above-captioned proceedings, the Commission conditionally accepted proposed revisions of the New York Independent System Operator, Inc.’s (“NYISO’s”) Open Access Transmission Tariff (“OATT”) to clarify the operation and funding of the Working Capital Fund, and ordered the NYISO to submit a compliance filing reflecting modifications discussed in the January 21 Order. The NYISO hereby tenders this filing in compliance with the January 21 Order.

**I. Documents Submitted**

1. This letter;
2. a clean version of the NYISO’s proposed revisions to its OATT (“Attachment I”);
3. a blacklined version of the NYISO’s proposed revisions to its OATT (“Attachment II”);
4. a form of *Federal Register* Notice (“Attachment III”).

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<sup>1</sup> 102 FERC ¶ 61,056 (2003).

## **II. Copies of Correspondence**

Communications regarding this proceeding should be addressed to:

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Mollie Lampi, Assistant General Counsel  
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## **III. Proposed Effective Date**

The NYISO proposes that these revisions become effective on January 17, 2003, the effective date established by the January 21 Order.<sup>3</sup>

## **IV. Service List**

Copies of this filing are being served on all parties designated on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO is also serving a copy of this filing to all parties that have executed Service Agreements under the

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<sup>2</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2001) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

<sup>3</sup> See 102 FERC ¶ 61,056 (2003).

NYISO's OATT or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

## **V. Discussion of Proposed Tariff Changes**

### **A. Section 5.1 of Attachment V to the OATT**

As directed by the Commission, the NYISO has removed certain language from Section 5.1 of Attachment V to the OATT. This change is reflected in the clean and redlined versions of the OATT contained in Attachments I and II of this letter.

### **B. Section 5.2 of Attachment V to the OATT**

In the January 21 Order, (P 13) the Commission directed the NYISO to explain or reconcile what appears to be a contradiction between the language in Section 5.2 of Attachment V of the OATT, as it was filed by the NYISO, and additional language that the New York Transmission Owners ("TOs") have proposed with the consent of the NYISO. The TO's propose to include language stating that, "The ISO shall pursue available remedies for Customer defaults under the ISO Tariffs. All funds held by the ISO relative to the defaulting Transmission Customer (e.g., working capital) shall be *set aside* pending determination of ISO's counsel and/or the appropriate bankruptcy courts as to the appropriate disposition of such funds." (Emphasis added.) The Commission states that this additional language appears contradictory to subsequent language in Section 5.2, which authorizes the NYISO to "*utilize* the Working Capital Fund as necessary to meet its cash flow requirements." (Emphasis added.)

The intent of the TOs and the NYISO in adding the additional language was to clarify that a nonpaying customer's *own* contribution to the Working Capital Fund would not be applied to its unpaid balance until the NYISO has assurance, from a bankruptcy court or NYISO counsel, that those funds are not subject to superior claims from any of the customer's other creditors. This narrow limitation is intended only to prevent the NYISO from using a customer's contribution to the Working Capital Fund to satisfy a nonpayment in circumstances in which the NYISO would not be permitted to do so under bankruptcy law. This provision does not, however, restrict the NYISO's ability to use *other* customer's contributions to the Working Capital Fund to meet the NYISO's cash flow requirements in the event of a customer nonpayment.

To resolve the potential confusion that the Commission has identified, the NYISO has proposed revised language in the clean and redlined versions of the OATT included as Attachments I and II to this letter.

The Honorable Magalie R. Salas  
February 5, 2003  
Page 4

**C. Section 7.0 of Attachment V to the OATT**

The January 21 Order also directed the NYISO to undertake a stakeholder process to determine the proper method of allocating responsibility for contributions to the NYISO's Working Capital Fund. Specifically, the Commission directed the NYISO to review the suitability of using a customer's average pro-rata load ratio share during the last three months of one calendar year to determine the customer's contributions to the Working Capital Fund over the following twelve-month period. In compliance with the January 21 Order, the NYISO will expeditiously undertake a stakeholder process to determine the appropriate time period upon which to base the calculation of a customer's contribution to the NYISO's Working Capital Fund and will make an appropriate filing with the Commission upon the completion of this process.

**VI. Federal Register Notice**

A form of *Federal Register* Notice is provided as Attachment III hereto.

**VII. Conclusion**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By \_\_\_\_\_  
Ted J. Murphy  
Counsel for  
New York Independent System Operator, Inc.

cc: Daniel L. Larcamp  
Alice M. Fernandez  
Robert E. Pease  
Michael A. Bardee  
Stanley P. Wolf

## **ATTACHMENT I**

## **ATTACHMENT II**

## **ATTACHMENT III**

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

**New York Independent System Operator, Inc.**

**Docket Nos. ER03-200-000 and  
ER03-200-001**

**NOTICE OF FILING**

Take notice that on February 5, 2003, the New York Independent System Operator, Inc. ("NYISO") tendered for filing a compliance filing in connection with the Commission's January 21, 2003, order in the above-referenced dockets.

The NYISO has served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 224 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's website at [www.ferc.gov](http://www.ferc.gov), using the FERRIS link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502-8222 or TTY, (202) 208-1659. Protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-filing" link. The Commission strongly encourages electronic filings.

Comment Date:

Magalie R. Salas  
Secretary



### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties listed on the official service list maintained by the Secretary of the Commission in Docket Nos. ER03-200-000 and ER03-200-001 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.2010 (2002).

Dated at Washington, D.C. this 5th day of February 2003.

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