

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

**Standards of Conduct for Transmission      )                   Docket No. RM01-10-000**  
**Providers    )**

**COMMENTS OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to the Notice of Proposed Rulemaking (“NOPR”) issued September 27, 2001 in the above-captioned proceeding,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) submits these initial comments. The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale electricity markets in New York State.

**I.       COMMUNICATIONS**

Communications regarding this proceeding should be addressed to:

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<sup>1</sup> *Standards of Conduct for Transmission Providers*, 96 FERC ¶ 61,334 (2001).

## II. COMMENTS

The NYISO is a not-for-profit entity that does not have any energy affiliates and it will therefore not be directly affected by the rule changes proposed in the NOPR. Nevertheless, the NYISO generally supports the NOPR's recommendations and the Commission's overall goal of ensuring that its standards of conduct prevent transmission providers' from transferring market power to their energy affiliates. While the NYISO believes that the existing electric standards of conduct have worked well, and have facilitated the development of competitive wholesale markets in New York, most of the NOPR's proposals represent reasonable improvements over the *status quo*. The NYISO respectfully offers the following suggestions to further improve the Commission's proposed rules.

Most importantly, the Commission should clarify that Commission-approved Independent System Operators ("ISOs") should be exempt from the standards of conduct. Similarly, transmission providers which participate in such ISOs should be eligible to request exemptions from the standards, at least until such time as a Commission-approved Regional Transmission Organization ("RTO") is operational in the ISO's region. Proposed Section 358.1 would make these exemptions available to RTOs and their transmission provider members but does not mention ISOs.<sup>2</sup> The requested clarification is necessary because it is likely that there will be a transition period between the time that the revised standards of conduct take effect and the time that Commission-approved RTOs are in place in the Northeast and West. Recognizing this reality, the Commission has adopted a similar rule in its recent orders establishing an interim

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<sup>2</sup> NOPR, *slip op.* at 11.

methodology for reviewing market-based rate applications.<sup>3</sup> Moreover, the requested clarification is sound policy because ISOs that physically operate a single control center and have operational control over transmission assets are similarly situated to RTOs with the same characteristics.

With respect to proposed Section 358.4(b) the NYISO believes that the Commission should be very careful about requiring that transmission providers identify potential merger partners on the relevant OASIS and/or Internet site. An open-ended requirement to identify “potential” partners would pose a difficult definitional challenge, insofar as it would require transmission providers to determine when merger negotiations were sufficiently serious to necessitate a posting. Requiring postings to be made too early could also have a chilling effect on merger negotiations and impede efficient combinations. However, a posting rule that was limited to announced mergers would be both appropriate and consistent with the Commission’s policy to treat announced merger partners as affiliates.

The NYISO does not believe that there is a need for “clearer standards” governing employee transfers under proposed Section 358.4(c) at this time. The NYISO is not aware of any abuses involving the “cycling” of employees by its member transmission providers and its standards governing transfers of employees from the NYISO have worked well. Adding new regulations in this area would be likely to create inefficient barriers to employee transfers and unlikely to bring any additional benefits.

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<sup>3</sup> See *AEP Power Marketing, Inc., et al.*, 97 FERC ¶ 61,219 (exempting all sales into an ISO- or RTO-administered market from the Commission’s interim “Supply Margin Assessment” price screen).

The NYISO believes that the filing requirements set forth in proposed Section 358.4(e) are more than sufficient and that it will not be necessary to adopt still more rigorous requirements. If the Commission nevertheless continues to have compliance concerns the NYISO suggests that it consider requiring transmission providers to file a verification statement (e.g., an annual letter) stating how they have implemented their posted standards of conduct over some period of time (e.g., the preceding year). If an organization were to merge or be purchased during this period, the new merged entity or purchaser could be required to file an updated verification statement.

The NOPR's proposal to prohibit affiliated power generators from connecting with affiliated pipelines<sup>4</sup> would very likely have a variety of unintended, adverse effects and should not be included in a final rule. Many of the proposed generation projects in New York State, as well as the rest the country, are to be built near existing pipelines or soon to be constructed spurs from larger natural gas pipelines. Restricting the siting options of new power generators, regardless of whether they are affiliates of the pipeline company, could have serious negative impacts on efforts to reduce congestion, maintain adequate reserves, improve environmental quality, and minimize overall project costs. These are major issues in New York State and are very important to the NYISO. The system of behavioral rules embodied in the standards of conduct should suffice to prevent abuses from occurring in this context while still allowing developers to make efficient siting decisions.

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<sup>4</sup> NOPR, *slip op.* at 25.

Finally, the NYISO perceives little advantage in codifying the Commission's current code of conduct requirements. The Commission has already established a standard code of conduct that is well known and understood. There thus appears to be little to gain by insisting on its codification. in the Commission's regulations. Codification might also deprive the Commission of the ability to quickly revise the code of conduct to address changing circumstances.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By \_\_\_\_\_  
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December 20, 2001

## **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. RM01-10-000, 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, DC this 20th day of December, 2001.

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