

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

**Regional Transmission Organizations )**

**Docket No. RM99-2-000**

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

**I. Introduction**

The New York Independent System Operator, Inc. (“NYISO”) is the independent body that will exercise operational control over designated transmission facilities in the State of New York.<sup>1</sup> The NYISO is a newly formed entity, as are all Independent System Operators (“ISOs”), the longest established of which has been in operation for less than two years. The NYISO believes that these existing ISOs should be given an opportunity to operate long enough to determine what changes, if any, are needed. The NYISO supports the objectives and many aspects of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Notice of Proposed Rulemaking (“NOPR”) on Regional Transmission Organizations (“RTOs”).<sup>2</sup>

In particular, the NYISO endorses the NOPR’s emphasis on regional flexibility, the need to avoid prescriptive, one-size-fits-all regulatory mandates, and the importance of deferring to appropriate state concerns. The NYISO also strongly agrees with the NOPR’s commitment to “respect the investment of time and other resources made in existing transmission entities, [*i.e.*,

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<sup>1</sup> The NYISO was conditionally established pursuant to *Central Hudson Gas & Electric Corp., et. al.*, 83 FERC ¶ 61,352 (1998), *order on reh’g*, 87 FERC ¶ 61,135 (1999); *see also Central Hudson Gas & Electric Corp., et. al.*, 86 FERC ¶ 61,062 (1999) (order conditionally accepting the NYISO’s tariff and market rules and approving the NYISO’s proposed market-based rates), *order on reh’g*, 88 FERC ¶ 61,138 (1999).

<sup>2</sup> *Regional Transmission Organizations, Notice of Proposed Rulemaking (“NOPR”), IV* FERC Stats. & Regs. ¶ 32,541 (1999).

the previously approved ISOs]<sup>3</sup> and [to] understand the importance of avoiding change during the critical implementation periods these institutions are now undergoing.”<sup>4</sup> By permitting each incipient ISO or RTO to develop without undue interference the Commission will encourage experimentation and creative thinking in every part of the country, while allowing different regions to learn from each other.

The NYISO respectfully submits, however, that some of the NOPR’s specific proposals could interfere with this commitment to avoid changes during the NYISO’s “critical implementation period” and disrupt its development. ISOs are new institutions, indeed the NYISO is still more than six weeks away from its anticipated start date. Nevertheless, it is already clear that ISOs represent a dramatic improvement over previous market institutions and will bring great benefits. The Commission should thus not attempt to “improve” previously approved ISOs by requiring them to meet generic requirements by a date certain. Instead, it should allow them to gain operational experience, conduct their individual experiments, develop solutions to their problems, and find ways to work together to address issues that they are unable to fully deal with on their own. Overly prescriptive Commission action can only be disruptive.

Finally, although the Commission lacks power to alter the tax regulations that complicate the participation of entities that use tax-exempt financing in RTOs, it should apply the rules developed in this proceeding with maximum flexibility, in order to facilitate the continuing

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<sup>3</sup> “Previously approved ISOs” include the California ISO, the PJM Interconnection, L.L.C., ISO New England, the Midwest ISO and the NYISO, all of which have been conditionally authorized as having satisfied Order No. 888’s eleven ISO principles.

<sup>4</sup> NOPR at 33,758.

involvement in the NYISO of entities such as the New York Power Authority (“NYPA”), Long Island Power Authority (“LIPA”) and Consolidated Edison Company of New York.

## **II. The Commission Should Respect the Substantial Progress that the NYISO Has Made Thus Far**

The NYISO has been carefully designed to account for: (i) the characteristics and history of the New York Power Pool; (ii) the special reliability needs of New York State and New York City; (iii) the establishment of the Commission-approved<sup>5</sup> New York State Reliability Council; (iv) the important role of entities using tax-exempt financing in New York State and the need to ensure their participation in the NYISO; (v) the concerns of the New York State Public Service Commission (“NYPSC”); and (vi) the requirements of New York State’s retail access program.

As presently constituted, the NYISO is already in general compliance with the eleven minimum RTO characteristics and functions (“RTO standards”) proposed in the NOPR.<sup>6</sup> It will be independent, will be sufficiently large<sup>7</sup> and properly configured<sup>8</sup> to meet the NOPR’s

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<sup>5</sup> See NOPR at 33,379 n. 223, citing *Central Hudson Gas & Elec. Corp., et. al.*, 83 FERC ¶ 61,352 at 62,411 (1998).

<sup>6</sup> See NOPR at 33,725 (listing the minimum RTO characteristics and functions.)

<sup>7</sup> The NYISO operates 18,579 miles of transmission facilities, more than the PJM Interconnection, L.L.C., ISO New England or the proposed Entergy Transco. The peak load of the New York Control Area (“NYCA”) this summer reached a high of 30,311 MW, larger than ISO New England’s peak of 22,533 MW, as well as the Tennessee Valley Authority’s, which recently experienced 27,953 MW.

<sup>8</sup> An RTO operating within New York borders would appear to satisfy the NOPR’s regional configuration factors. Using those boundaries would: (i) enable the RTO to achieve the NOPR’s RTO goals; (ii) encompass an area “for which real-time communication is critical, and unified operation is preferred;” (iii) recognize existing trading patterns without perpetuating trading barriers; (iv) not facilitate the exercise of market power; (v) encompass an existing control area, *i.e.*, the NYCA, and an existing, albeit soon to disappear, transmission entity, the New York Power Pool; (vi) encompass a single, contiguous geographic area; (vii) encompass a highly interconnected portion of the grid; and (viii) not disrupt existing regional institutions.

objectives, will have the requisite operational authority, and will be responsible for short-term reliability. It will also administer its own tariff, manage congestion through the use of an innovative market-based system, work to address parallel path flows, provide ancillary services, operate a single OASIS, calculate, to the extent required, ATC and TTC, perform a market power monitoring function, and coordinate transmission planning and expansion. It will therefore be well positioned to foster wholesale competition, increase market efficiency, and stimulate new investment and innovation.

Accordingly, the Commission should not interpret its RTO standards so restrictively as to exclude from their scope previously approved ISOs, such as the NYISO, that already largely satisfy them. Instead, the Commission should treat previously approved ISOs that depart in some details from the strictures of the RTO standards as acceptable regional variations on a generic norm. Moreover, to the extent that the Commission requires previously approved ISOs to make changes, it should not compel them to meet the NOPR's December 15, 2001 deadline. By that date, the NYISO will have had only slightly more than two years of operating experience, which is unlikely to be enough time to permit definitive judgments about what has been learned, or a thorough review of whether further changes are needed.

Finally, if the Commission determines that a previously approved ISO is not in compliance with the RTO standards it should not impose penalties, as the NOPR appears to contemplate,<sup>9</sup> on its transmission-owning members. Such a policy could pressure an ISO to make hasty, ill-advised decisions in order to protect its members, or, especially in the NYISO's case, could result in the

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<sup>9</sup> NOPR at 33,672 (suggesting that utilities which are not participants in operational FERC-approved RTOs by January 15, 2001 might, among other things, be deprived of market-based rate authority or denied Section 203 approval of proposed mergers or acquisitions.)

withdrawal of transmission owners, exactly the opposite of the Commission’s intended purpose. Indeed, the NYISO believes that previously approved ISOs’ transmission owning members should be eligible for whatever RTO participation incentives and benefits are ultimately adopted in this proceeding.

**III. The Commission Should Not Adopt Overly Prescriptive Regulations Or Interpret Its Proposed Regulations in Overly Prescriptive Ways**

**A. RTO Characteristic No. 1: Independence**

The NYISO supports the Commission’s fundamental policy determination that RTO independence is “a prerequisite for achieving fair, open and competitive power markets”<sup>10</sup> and believes that it will fully comply with this requirement. At the same time, the NYISO asks that the Commission recognize that there is more than one way to structure a fully independent entity, and that the independence of all incipient RTOs should be evaluated on a case-by-case basis, rather than pursuant to rigid rules. In fact, the multiplicity and diversity of the existing ISOs should be viewed as a resource, enabling the ISOs and the Commission to benefit from the different ways in which the ISOs approach problems.

**(1) Financial Independence**

The NYISO sees no need for the Commission to develop additional RTO financial independence or conflict of interest requirements on a generic basis. Moreover, the NYISO urges the Commission not to generically adopt a more expansive definition of “Market Participant,” which would needlessly extend the prohibition on holding financial interests to entities with little connection to RTO-administered markets, *e.g.*, transmission entities in neighboring regions.<sup>11</sup>

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<sup>10</sup> NOPR at 33,726.

<sup>11</sup> NOPR at 33,727.

Each RTO's code of conduct and conflict of interest policy should be reviewed on a case-by-case basis to ensure that they are sufficient in light of each RTO's particular circumstances.

**(2) Independent Decision-Making**

The importance of regional variation and experimentation is especially true with respect to previously approved ISOs that have already gone to great lengths to develop fair governance procedures to ensure they "have a decision-making process that is independent of control by any market participant or class of participants."<sup>12</sup> There is simply no reason to presume that a governance proposal which has been deemed adequate to guarantee an ISO's independence will somehow prove inadequate for an RTO. To the contrary, previously approved ISOs with Commission-approved governance procedures will be well-situated to detect and address future threats to their independence.

The NYISO seeks clarification that the Commission will allow RTOs to have "collaborative" governance systems. In the NOPR, the Commission indicated that it has previously accepted two-tier governance arrangements under which the ISO Board wields "ultimate authority" but is advised by, and delegates certain decisions to, ISO Committees.<sup>13</sup> The NYISO asks the Commission to confirm that it would consider a governance model, such as the one proposed for the NYISO, that features a substantial amount of collaborative decision-making by the NYISO Board, the NYISO Management Committee and other committees subordinate to it, to be an acceptable "two-tier" governance system. The Commission should not exclude the possibility that such governance proposals can be an acceptable means of providing for

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<sup>12</sup> NOPR at 33,727.

<sup>13</sup> NOPR at 33,727.

stakeholder participation while preserving independence, unless and until an ISO's or RTO's experience demonstrates that they are inadequate.

**(3) Authority to Amend ISO Tariffs and Market Rules**

The NOPR proposes that an RTO must have “exclusive authority to file changes to its transmission tariff with the Commission under Section 205 of the Federal Power Act.”<sup>14</sup> It also asks whether RTOs should have unilateral authority to amend their market rules.<sup>15</sup> The NYISO supports these proposals as a generic requirement, but asks that the Commission consider allowing variations when an incipient RTO determines that it would be appropriate to do so. For example, although the NYISO may make filings pursuant to Section 205 of the Federal Power Act when the NYISO Board and NYISO Management Committee agree to do so, the NYISO Board is not authorized to unilaterally file amendments except in extraordinary situations. When acting unilaterally, the NYISO Board must file proposed amendments pursuant to Section 206.<sup>16</sup> The NYISO should be allowed time to determine whether the contemplated sharing of filing responsibilities between it and the NYISO Management Committee will adversely affect its independence, or reduce its ability to deal promptly with new issues. If the NYISO Board discovers that its freedom of action is impaired by its lack of unilateral filing authority, it will promptly bring the matter to the Commission's attention.

**B. RTO Characteristic No. 2: Scope and Regional Configuration**

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<sup>14</sup> NOPR at 33,729.

<sup>15</sup> *Id.*

<sup>16</sup> See *Independent System Operator Agreement* §§ 19.01(c)(ii), 19.2; *Agreement Between New York Independent System Operator and Transmission Owners* § 3.03.

In the NOPR, the Commission specified that an RTO must serve “a region of sufficient scope and configuration to permit the RTO to effectively perform its required functions and to support efficient and non-discriminatory power markets.”<sup>17</sup> The Commission should interpret its proposed regional scope and configuration requirements flexibly and allow previously approved ISOs that will administer large areas, such as New York State, to develop in response to both market forces and engineering realities. Even if a previously approved ISO might arguably be considered better able to address certain issues if it were larger, *e.g.*, parallel path flows, all of the previously approved ISOs are substantially better at dealing with them than pre-existing institutions. Moreover, it will be far less disruptive and costly for them to be handled through cooperative arrangements than by forcing the formation of larger RTOs.

A good example is the August 10, 1999 *Memorandum of Understanding* among the three Northeastern ISOs<sup>18</sup> pursuant to which they have agreed to coordinate their efforts to promote interregional trade, facilitate broader competitive markets and exchange ideas and information. The three ISOs will be able to begin working towards these joint goals immediately and will make progress, which a Commission attempt to force the creation of larger ISOs would delay for years. The future is sure to see additional voluntary coordination involving the Northeastern ISOs, as well as other incipient RTOs, which will bring even greater rewards, provided that the Commission allows it to happen.

**C. RTO Characteristic No. 4: Short-Term Reliability**

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<sup>17</sup> NOPR at 33,729.

<sup>18</sup> *Memorandum of Understanding Among the New England, New York and PJM Independent System Operators Concerning Interregional Coordination Activities* (August 10, 1999).

The NYISO agrees with the NOPR that RTOs must be responsible for ensuring short-term reliability and believes that it will fully comply with this requirement. With respect to the NOPR's questions concerning the extent of RTOs' liability in connection with efforts to maintain reliability,<sup>19</sup> the NYISO suggests that the governing standard for liability for a particular activity should be the same standard that the Commission has approved for comparable ISO conduct. Thus, for example, the NYISO would only be subject to liability on account of its reliability activities when damage caused by its actions is found to be the result of gross negligence or intentional misconduct.<sup>20</sup>

**D. RTO Function No. 1: Tariff Administration and Innovative Rate Design**

The NYISO supports the NOPR's proposed requirement that an RTO must, "administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities."<sup>21</sup> The NYISO believes that it is already in compliance with this requirement but nevertheless seeks clarification of two points. First, it is possible to interpret certain language in the NOPR's discussion of RTO Characteristic No. 1 as linking the requirement that an RTO must provide service under its own OATT with the requirement that an RTO must have the right to file Section 205 tariff changes unilaterally.<sup>22</sup> If the NOPR is read in this way, an entity which is not authorized to file tariff amendments

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<sup>19</sup> NOPR at 33,738.

<sup>20</sup> See *Independent System Operator Agreement* § 25.01 (establishing that the NYISO will only be liable for gross negligence or intentional misconduct, except with respect to services provided under the ISO OATT.)

<sup>21</sup> NOPR at 33,379.

<sup>22</sup> NOPR at 33,729. ("We believe that independence requires that the RTO provide service under its own open-access transmission tariff and that it has the right to file changes to its tariff with the Commission on its own authority.")

unilaterally under Section 205 could not comply with RTO Function No. 1. The NYISO disagrees with this interpretation and urges the Commission to clarify that the NOPR does not require it.<sup>23</sup>

Second, the NOPR emphasizes that RTOs must ensure “non-discriminatory access for new entrants such as new generators” which requires that an RTO “rather than existing transmission owners” must “have the authority to review and approve requests for interconnection.”<sup>24</sup> The NYISO requests confirmation that an entity, such as the NYISO, that shares joint authority over interconnection requests with transmission owners<sup>25</sup> would satisfy this standard.

**E. RTO Function No. 3: Developing Procedures to Address Parallel Path Flows**

The Commission should interpret this proposal<sup>26</sup> broadly and allow multiple RTOs to develop coordinated strategies for handling parallel path flows, rather than mandating that RTOs be so large as to be capable of mitigating parallel path flows entirely on their own. The NYISO, for example, will reduce intra-regional parallel flow problems through its administration of its Locational-Based Marginal Pricing (“LBMP”) system and will work closely with neighboring ISOs to address inter-regional problems.

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<sup>23</sup> See *supra* Part II.B.1(c) for a discussion of the NYISO’s position on RTO Characteristic No. 1, and the NOPR’s proposal that RTOs must have unilateral authority to make Section 205 filings.

<sup>24</sup> NOPR at 33,740.

<sup>25</sup> See *NYISO Open Access Transmission Tariff* §§ 19B, 32B.

<sup>26</sup> NOPR at 33,743.

There is no reason to think that such collaborative efforts will be ineffective and, insofar as parallel path flow problems affect the entire Eastern Interconnection, some kind of inter-RTO collaboration is probably inevitable. Given that it would be extremely disruptive to require that previously approved ISOs expand or combine in the short term, and assuming that it would be prohibitively difficult and expensive, if not outright impossible, to form an RTO the size of the Eastern Interconnection, the Commission should allow RTOs to satisfy RTO Function No. 3 through cooperative efforts, such as those envisioned in the *Memorandum of Understanding* recently executed by the CEOs of the three Northeastern ISOs.

In addition, the NYISO supports the NOPR's proposal to allow RTOs three years from the proposed December 15, 2001 RTO commencement date to comply with this standard. The Commission should also be open to requests for additional time, beyond the three year period, if individual RTOs demonstrate that extra time is needed.

**F. RTO Function No. 4: Serving as a Supplier of Last Resort for Ancillary Services**

With respect to the question of whether RTOs, which do not own any generation, should comply with the same ancillary service requirements as vertically-integrated utilities,<sup>27</sup> the NYISO proposes that RTOs should use their best efforts to administer efficient ancillary services markets but, because they will not own generation, should not be expected to act as a direct supplier of last resort for ancillary services.

**G. RTO Function No. 5: Operating a Single OASIS, Calculating ATC and TTC**

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<sup>27</sup> NOPR at 33,745.

The NYISO agrees that an RTO “must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.”<sup>28</sup> The NYISO asks, however, that the Commission interpret this requirement flexibly so that RTOs which operate LBMP-type congestion management systems, and which therefore do not need to calculate ATC or TTC, may still be found to be in compliance.<sup>29</sup>

**H. RTO Function No. 6: Market Power Monitoring**

The NYISO will of course comply with the requirements the Commission develops in response to the NYISO’s filing of its market power monitoring and mitigation plan,<sup>30</sup> but respectfully submits that while it may be appropriate for RTOs to sanction outright violations of market or reliability rules, play a front-line market monitoring role, collect information and report suspicious patterns of activity to the Commission or appropriate antitrust enforcement agencies, an RTO’s market power policing role should be limited. Specifically, RTOs should mitigate evident market power problems that can be addressed on a prospective basis by applying pre-approved remedies. RTOs should not, however, be required to play investigative and enforcement roles that are more properly left to the Commission or to the antitrust enforcement agencies. In short, RTOs should not become a vehicle for the re-regulation of markets that

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<sup>28</sup> NOPR at 33,747.

<sup>29</sup> The NYISO recently asked to be relieved of its obligation to calculate ATC and TTC. *See Request for Limited Waiver of OASIS Requirements* at 3, Docket No. ER97-1523-000, *et. al.*, July 9, 1999.

<sup>30</sup> *See Central Hudson Gas & Electric Corp., et. al.*, 86 FERC ¶ 61,062 at 61,240 (1999) (“(N) The New York ISO is hereby directed to file a detailed monitoring and mitigation plan as discussed in the body of this order, within six months of the date of this order, or the date that the ISO commences operations, whichever comes sooner.”)

should now be governed by competitive forces, and should not be required to assume the role that antitrust enforcement plays in every other competitive market.<sup>31</sup>

Finally, RTOs that are ISOs<sup>32</sup> should perform their market-monitoring function themselves and should not be required to establish autonomous market-monitoring units (“MMUs”) to oversee this activity. ISOs have no incentive to distort the results of their analysis and the Northeastern ISOs are already supported by independent market power experts. Moreover, if an ISO is not, as the NYISO proposes, engaged in undue market regulation or duplicative antitrust enforcement, there will be no need to establish an independent MMU to guard against overzealous enforcement or excessive meddling in the marketplace. There is thus no reason for the Commission to require ISOs to incur the additional costs, or endure the bureaucratic complexity, that would inevitably follow the creation of an independent MMU. Adding yet another level of market review, and potential control, could have the unintended consequence of reducing market innovation and efficiency.

**I. RTO Function No. 7: Transmission Planning and Expansion**

The NYISO generally supports the NOPR’s proposal that an RTO “must be responsible for planning necessary transmission additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities.”<sup>33</sup> Nevertheless, the NYISO is concerned that the NOPR’s

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<sup>31</sup> It may, however, be appropriate, for RTOs to be authorized to impose penalties on entities that violate their market rules.

<sup>32</sup> The NYISO is not prepared at this time to address the question of whether different market power monitoring rules should apply to RTOs that are Transcos.

<sup>33</sup> NOPR at 33,751.

proposed requirement that an RTO have exclusive authority over transmission planning is overly restrictive.

Entities which are responsible for coordinating transmission expansion, but which lack authority to make enforceable planning decisions, can nevertheless achieve the NOPR's chief transmission expansion-related goal, *i.e.*, ensuring that investments in new transmission facilities are "coordinated to ensure a least cost outcome that maintains or improves existing reliability levels."<sup>34</sup> In addition, the Commission should consider that in many cases the real obstacle to transmission expansion is not the absence of a powerful regional planning entity, but the lack of incentives for building new facilities. The Commission could do a great deal to promote transmission expansion by reforming its pricing policies. The Commission should also be cognizant of the needs of RTOs to provide incentives for the development of innovative, transmission-related technologies that are appropriate to their particular region.

In many cases, of course, transmission expansion is delayed or blocked entirely by environmental and other transmission siting regulations. Nevertheless, the NYISO supports the NOPR's proposal that RTOs participate in efforts to create multi-state transmission expansion agreements.

#### **J. The Open Architecture Requirement**

The NYISO strongly supports the NOPR's open architecture requirement as a natural corollary to the principle that individual transmission entities be allowed to conduct their own experiments, and to evolve, without undue interference. The NYISO supports the NOPR's requirement that there be "no provision in any RTO proposal that precludes the RTO and its

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<sup>34</sup> NOPR at 33,751.

members from improving their organizations to meet market needs. . . ,” and that an “RTO’s enabling agreements should at best anticipate and facilitate such a change, but at a minimum should not prevent it or make it more difficult than necessary.”<sup>35</sup>

**K. Power Exchanges (“PXs”)**

The NYISO endorses the Commission’s decision to “leave it to each region to decide whether there is a need for a PX and whether the RTO should operate the PX.”<sup>36</sup> Experience has demonstrated that ISOs are successfully performing PX functions, and that it is feasible for an ISO to operate a spot energy market without compromising its ability to provide non-discriminatory transmission service to all market participants. There is little reason to revisit basic PX issues on a generic basis when they have been effectively addressed in individual ISO orders. Rather, such issues should be resolved on the basis of the real-time functioning of regional markets. The NYISO looks forward to contributing its experience to this process.

**IV. The Commission Should Allow Previously Approved ISOs to Continue to Develop Without Undue Interference**

Previously approved ISOs are well-situated to identify any remaining problems in their design and to respond to new problems that may arise in the future. There is thus no need for the Commission to prescribe new regulations that could require previously approved ISOs to make changes in anticipation of problems that may never materialize. As a general principle, the Commission should defer to previously approved ISOs, and make them chiefly responsible for

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<sup>35</sup> NOPR at 33,753.

<sup>36</sup> NOPR at 33,760.

their own development and growth. They should not be forced to make changes in compliance with arbitrary deadlines but should be permitted to evolve naturally.

The Commission should also clarify that previously approved ISOs should be involved in any filing that their transmission owning members submit to bring them into fuller compliance with the proposed RTO standards. The NOPR is unclear on this point insofar as it requires the member utilities of previously approved ISOs to make RTO filings by January 15, 2001,<sup>37</sup> yet also suggests that previously approved ISOs may themselves make their own filings.<sup>38</sup> The NYISO suggests that it would be appropriate for previously approved ISOs and their transmission-owning members to make joint or separate filings so long as the ISOs have an opportunity to participate.

Finally, the NYISO supports the Commission's proposal to adopt streamlined filing and approval procedure for RTOs, and asks that this light-handed regulatory approach be extended to previously approved ISOs as well.<sup>39</sup> This approach will make it easier for previously approved ISOs, and other future RTOs, to continue to develop and improve over time.

**V. The Commission Should Adopt Flexible Policies to Facilitate Participation in RTOs by Entities Using Tax-Exempt Financing**

In the NOPR, the Commission indicated that it was "concerned about any obstacle to public power participation in the formation and successful operation of any form of RTO." It also sought comments "that identify issues that public power entities and others face regarding RTO participation and that suggest ways the Commission might facilitate their resolution."<sup>40</sup> Although the Commission has no power to change the tax-exempt financing laws, it can flexibly apply its

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<sup>37</sup> NOPR at 33,758.

<sup>38</sup> NOPR at 33,758 n. 285.

<sup>39</sup> NOPR at 33,720.

RTO requirements so that RTOs, and their members utilizing tax-exempt financing, can accommodate tax law restrictions in their ISO participation agreements.

More specifically, the Commission should continue, as it has thus far with regard to the NYISO, to be flexible in its interpretation of its proposed rules requiring that RTOs: (i) have exclusive operational authority over all transmission facilities under their control; (ii) have exclusive control over interchange schedules; and (iii) be the sole OATT administrator with exclusive authority to review and approve or deny requests for service. All of these rules could potentially create problems for NYISO participants that use tax-exempt financing. The Commission should facilitate their participation by establishing narrowly tailored exceptions to the RTO standards that will avoid creating such problems.

## **VI. Conclusion**

In conclusion, the NYISO believes that the NOPR charts the right course for the future development of the electric utility industry. The NYISO enthusiastically supports the NOPR's goals of promoting the voluntary formation of RTOs, ensuring RTO independence, encouraging the regional planning for, and pricing of, transmission services, and providing adequate incentives for the strengthening and expansion of the transmission system. Moreover, the NYISO believes that the NOPR's flexibility and willingness to accommodate regional variation and experimentation will allow RTOs to evolve in the manner best-suited to the needs of a competitive marketplace.

At the same time, the NYISO asks that the Commission not lose sight of the fact that although ISOs are brand new institutions, they have already done, and will continue to do, a great

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<sup>40</sup> NOPR at 33,757.

deal to strengthen reliability, foster competition, attract new capital, promote technological innovation, and unleash competitive and creative forces. The Commission should continue its commitment to respect the investment of time and resources that have been made in previously approved ISOs and avoid forcing changes in the midst of their critical implementation periods. Otherwise, the Commission may inadvertently disrupt the implementation of these new institutions and retard their future development.

Such concerns notwithstanding, the NYISO commends the Commission for its work and looks forward to joining with it, other RTOs, and all other market participants, in a collaborative effort to achieve the NOPR's objectives.

Respectfully submitted,

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