

**MEMORANDUM**

TO: NYISO Staff  
FROM: Kevin Jones, LIPA

Deleted: ¶

DATE: August 25, 2006

RE: Comments on Draft "Proposed Expedited Third-Party Dispute Resolution Mechanism for Unresolved Customer Settlement Challenges"

The following changes are recommended to the Preliminary Draft.

**I. Scope**

This expedited process will be available only for Customer challenges to the accuracy of settlement information regarding correction or adjustment for errors by the ISO in arithmetic, computation or estimation that were not resolved in the ordinary settlement review, challenge, and correction process.

- This mechanism will only be available to address issues previously raised by the Customer in a settlement challenge or, where the NYISO makes modifications to the Customer's settlement relating to matters beyond the scope of the Customer's challenge, such errors and corrections associates with such modifications that are raised by the Customer with the NYISO pursuant to the settlement challenge review procedures.*

Formatted: Font: Italic

Formatted: Bulleted + Level: 1 + Aligned at: 0.75" + Tab after: 1" + Indent at: 1"

- Purely bilateral disputes between Market Participants, or disputes with the NYISO not challenging the accuracy of settlement information, will be excluded.*

- Market Participants with an interest in the outcome of an expedited third-party dispute resolution may be allowed to participate in the process upon the consent of the disputing parties.*

Formatted: Font: Italic

Formatted: Bullets and Numbering

Deleted: at the discretion of the neutral

A Customer may forego this mechanism if it concludes that third-party dispute resolution would be unlikely to resolve the matter. In such case, the Customer may seek action by FERC without first undertaking this dispute resolution process.

Deleted: Either the NYISO or the

Deleted: the party

Deleted: NYISO or the

**II. Request for Expedited Third-Party Dispute Resolution**

**A. Timing of the Request**

A request for expedited third party dispute resolution must be submitted to the Chief Financial Officer of the NYISO within ten (10) business days after receipt of a written determination by the NYISO that explicitly states that it is a final determination on the substantive merits of a Customer's settlement challenge and that the determination is subject to appeal under these procedures.

Deleted: five

Deleted: 5

Deleted: of the NYISO's

- *A request for expedited third-party dispute resolution would be premature prior to this point in the settlement review, challenge, and correction process. Late-filed requests will be denied. Denial of expedited third-party dispute resolution does not prejudice the ability of a party to seek resolution before FERC or any other jurisdictional authority.*

Formatted: Font: Italic

Formatted: Bullets and Numbering

- *This schedule allows notice, described in part C below, to Market Participants prior to issuance of a Close-Out Settlement.*

Formatted: Font: Italic

Formatted: Bullets and Numbering

## **B. Substance of the Request**

A Customer's request for expedited third-party dispute resolution must include: (i) the name of the Customer making the request; (ii) to the extent known, an indication of other potentially affected parties; (iii) a statement of the amount in controversy, which may be an estimate; (iv) an explanation of the Customer's claim sufficient to allow a determination of whether it is within the scope of the settlement challenge previously filed by the Customer; (v) copies of the previous settlement challenge materials submitted by the Customer to the NYISO; and (vi) citation to the provisions of the NYISO tariffs, manuals, or other materials upon which the Customer's claim relies.

## **C. Notice to Market Participants**

Promptly upon receiving a request for expedited third-party dispute resolution, and prior to issuance of the Close-Out Settlement, the NYISO shall notify Market Participants of the request. Notice shall describe the nature of the dispute in a manner that is sufficient for a Market Participant to determine if it has a similar or related dispute. Such notice shall not disclose, without prior consent of the disputing Customer, the Customer's identity, any information protected as Confidential Information or any information regarding the amount of money in dispute between the Customer and the NYISO.

## **III. Streamlined Procedures**

### **A. Pre-Selected Neutrals**

The NYISO will develop, with input from the appropriate stakeholder committee, a pre-selected pool of neutrals unaffiliated with the NYISO and its Market Participants and substantively qualified to preside over the expedited third-party dispute resolution. To the extent possible, neutrals shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues and the financial settlement of electric markets.

- *For each request for expedited third-party dispute resolution, the NYISO will randomly draw from the pre-selected pool of neutrals until an available neutral is found and appointed.*

Formatted: Font: Italic

- *The NYISO will maintain the list of pre-selected neutrals.*

- The parties shall not have the right to reject a neutral except for a demonstrated conflict of interest. If a conflict of interest disqualifies an available neutral, another neutral will be selected at random from the pre-selected pool until an available neutral that is free from conflicts of interest is found and appointed. If no neutral from the pre-selected pool is available and free from conflicts of interest, then the disputing parties may jointly select a neutral from outside the pool.

Formatted: Bullets and Numbering

## B. Consolidation

To ensure consistent treatment of disputes, Customer's requests for expedited third-party dispute resolution on the same issues with respect to a given invoice or invoices may be resolved on a consolidated basis, consistent with applicable confidentiality requirements.

- *Entities with rights or interests that would be materially affected by the outcome of an expedited third-party dispute resolution may participate upon the consent of the disputing parties.*

Formatted: Font: Italic

Formatted: Bullets and Numbering

Deleted: as the neutral deems appropriate

## IV. Conduct of Expedited Third-Party Dispute Resolution

The neutral shall aid the parties in reaching an acceptable resolution. However, the neutral shall not have authority to impose a resolution on the parties.

Formatted: Font: Not Bold

### A. Procedure

The neutral and representatives of the parties with authority to settle the dispute shall commence the dispute resolution process promptly after the date of the neutral's appointment.

Except as otherwise provided, the neutral shall have discretion over the conduct of the dispute resolution process. The neutral's discretion shall include: (i) requiring the parties to meet for discussion; (ii) allowing or requiring written submissions with statements of issue(s) and position(s); (iii) establishing guidelines for the written submissions; and (iv) allowing the participation of Market Participants who have requested an opportunity to be heard subject to the consent of the disputing parties.

Deleted: s

### B. Non-Binding Recommendation

**[No changes to first 2 paragraphs]**

Formatted: Font: Bold

Neither the recommendation of the neutral, nor any statements made by him/her or by another party or Market Participant or their representatives, or any written submissions prepared by another party for the expedited dispute resolution process, shall be

Deleted: any

Deleted: third-party

admissible for any purpose, in any subsequent proceeding. Evidence and statements prepared by a participant can be subsequently used by that participant.

V. Tolling of Statutory and Tariff Deadlines

**Deleted: Request for FERC Action**

Any otherwise applicable tariff deadlines for actions before FERC are tolled beginning on the day the request for expedited third-party dispute resolution is submitted to the Chief Financial Officer of the NYISO and continuing during the pendency of the dispute resolution process, including the 20 days following the neutral's recommendation.

**Deleted:** If the parties are unable to resolve the dispute in light of the neutral's recommendation, the parties shall be limited to a period of twenty days from the receipt of the neutral's recommendation to request FERC action.¶