

THIS TRANSMITTAL LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION.

SUBMITTED HERewith IN AN ENVELOPE THAT IS CLEARLY LABELED “CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE” IS INFORMATION THAT IS BEING SUBMITTED PURSUANT TO A CLAIM OF PRIVILEGE.

December 10, 2007

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

Re: Request for Privileged Treatment of Attachment III to the New York Independent System Operator, Inc.’s Concurrently Filed Report of Tariff Implementation Issues and Request for Limited Tariff Waivers; Docket No. ER08-____-000.

Dear Secretary Bose:

In accordance with section 388.112 of the Federal Energy Regulatory Commission’s (“Commission’s”) regulations,¹ and sections II and IV.A.4 of the New York Independent System Operator Inc.’s (“NYISO’s”) concurrently submitted Report of Tariff Implementation Issues and Request for Limited Tariff Waivers (“Report”), enclosed for filing are: (i) an original and 14 copies of this transmittal letter requesting privileged treatment of Attachment III to the Report, and (ii) a privileged and confidential, unredacted, Attachment III to the NYISO’s Report.

When Bids² submitted by Market Participants break conduct and impact thresholds defined in the NYISO’s Market Mitigation Measures (“MMM”),³ the MMM require the NYISO to replace the Bids with reference levels. Reference levels are intended to reflect the Bid(s) an economically rational generator would submit under competitive conditions. However, in the privileged and confidential sections of Attachment III to its Report, the NYISO identifies potential concerns with its implementation of Bid-based start-up reference levels that could, under some circumstances, permit entities bidding generation to inflate the generator’s start-up reference levels and exercise market power in a manner that could impact market clearing prices or, more likely, permit the generator to receive an enhanced Bid Production Cost guarantee (“BPCG” or “guarantee”) payment.

¹ 18 C.F.R. § 388.112 (2007).

² Capitalized terms not expressly defined herein shall have the meaning ascribed to them in the NYISO’s Market Administration and Control Area Services Tariff.

³ The MMM are set forth in Attachment H to the NYISO’s Market Administration and Control Area Services Tariff.

Privileged and confidential Attachment III to the Report contains 10 pages of competitively sensitive information that describes the concerns the NYISO and its Market Advisor, Dr. David Patton, have identified with the NYISO's implementation of Bid-based start-up reference levels. The information that the NYISO is submitting pursuant to a claim of privilege identifies three methods by which entities bidding generation into the markets that the NYISO administers could potentially inflate the Bid-based start-up reference levels that apply to their generators.

Accordingly, the enclosed privileged and confidential Attachment III contain competitively sensitive information that, if publicly disclosed before the NYISO is able to implement a remedy, could enable entities bidding generation into the New York markets to increase the compensation they receive by exercising market power. Thus, in accordance with 18 CFR § 388.112(b) of the Commission's regulations, the NYISO hereby requests privileged treatment of the information in Attachment III to the Report that the NYISO has designated via gray highlighting. A redacted version of this information is publicly available on pages 29 through 39 of the NYISO's Report.

Accompanying this transmittal letter is an original Attachment III to the Report, along with a cover page that conforms to the implementation rules published on the Commission's web site by your office. *See* 18 CFR § 388.112(b)(2)(iii) (2007). The envelope in which the privileged and confidential information is provided, along with each page of the enclosed privileged and confidential data, are clearly labeled "CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE."

Because the NYISO has publicly submitted redacted copies of the information in its concurrently filed Report, the NYISO has not included a redacted copy of Attachment III to the Report with this letter.⁴

In accordance with sections II and IV.A.4 of the Report, and following the execution of the Confidentiality and Non-Disclosure Agreement included as Attachment II to the Report by qualified person(s), the NYISO will provide an electronic copy of privileged and confidential Attachment III to interested persons/parties.

Courtesy copies of this filing, including the privileged and confidential information submitted with this letter, have been provided to Larry Gasteiger, Stephen Harvey and Lance Hinrichs of the Commission Staff.

The NYISO will electronically send a link to this transmittal letter to the official representatives of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, this transmittal letter 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.

⁴ If and to the extent the Commission consider a waiver to be necessary, the NYISO hereby requests waiver of the provisions of 18 C.F.R. § 388.112 and of the instructions on "How-to File Non-Internet Public, CEII or Privileged Material" with regard to its obligation (if any) to file a redacted, public version of Attachment III to the Report with this letter.

Kimberly D. Bose
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Please contact the undersigned with all questions regarding the NYISO's claims of privilege and/or questions regarding the privileged and confidential documents submitted herewith.

Respectfully submitted,

Alex M. Schnell
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Phone: 518-356-8707
Fax: 518-356-7678