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FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 30, 2005

In Reply Refer To:  
New York Independent  
System Operator, Inc.  
Docket No. EL05-144-000

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Ladies and Gentlemen:

1. On August 16, 2005, the New York Independent System Operator, Inc. (NYISO) submitted a request for authorization allowing it to recalculate and invoice generators that, due to software problems, received bills containing inaccurate persistent undergeneration charges<sup>1</sup> for the period August 1, 2001 to May 31, 2002. The NYISO states that, under section 7.4c of the NYISO's Market Administration and Control Area Services Tariff (Services Tariff), this time period remains open and subject to correction. The NYISO further states that it is scheduled to post close out settlements for this period starting on October 7, 2005, and requests a tariff waiver to recalculate undergeneration charges for this period using a method other than the one prescribed in the tariff sheets that were effective at the time, found in Rate Schedule 3-A of the Services Tariff. The NYISO also requests that the Commission issue an order on this request as expeditiously as possible, and no later than September 30, 2005, so that it can keep to its schedule for posting the close out settlements for this period.
2. This matter began when the NYISO discovered in May 2004, that it had calculated persistent undergeneration charges incorrectly for the period August 2001 through May 2004. After discovering this error, the NYISO corrected all persistent undergeneration charges for the period from June 2002 through May 2004 through the NYISO's rebilling process set forth in its tariff.

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<sup>1</sup> Persistent undergeneration penalties are assessed to generators that fail to produce energy in real-time at a level consistent with their real-time schedules.

3. The NYISO states that it has been unable to correct the persistent undergeneration charges imposed on generators for the period from August 2001 (when the charge went into effect) through May 2002 using actual data, because it does not have the data necessary for the correct calculation and it cannot recreate the required data. The NYISO explains that it lacks these data because it did not begin archiving all of the data necessary to the calculation until May 2002. Thus, the NYISO requests a tariff waiver to correct the inaccurate computation of the persistent undergeneration charges using estimated data.

4. The NYISO states that this is the most equitable approach possible under the circumstances and is preferable to forgiving the charges in their entirety or keeping the charges at their current erroneous levels. Further, while it normally avoids basing charges on estimated data, under the circumstances, the NYISO maintains that this approach will produce the most accurate rates possible. The NYISO adds that the proposal has been endorsed by New York market participants at a Business Issues Committee Meeting held in July 2005.

5. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 50,309 (2005) with comments, protests, or interventions due on or before September 2, 2005. The New York Transmission Owners<sup>2</sup> filed a timely motion to intervene. The Long Island Power Authority (LIPA) filed a timely motion to intervene and comments in support of the revisions. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

6. LIPA states that it supports the NYISO's requested tariff waiver for the use of an alternative calculation methodology so that the NYISO may resolve the persistent undergeneration charges inappropriately assessed to generators for the ten-month time period at issue. LIPA states that, without the grant of the NYISO's requested waiver and application of the alternative methodology, market participants that were assessed undergeneration charges from August 1, 2001 through May 31, 2002 would be subject to charges that have been acknowledged as in violation of the filed rate and not afforded the same correction as similarly situated participants against whom incorrect charges were assessed in other time periods. LIPA adds that the Commission's acceptance of the NYISO's requested tariff waiver and allowance of the alternative methodology will provide a just and reasonable resolution of the improper undergeneration charges for market participants.

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<sup>2</sup> Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Orange and Rockland Utilities, Inc. and Niagara Mohawk Power Corporation, a National Grid Company.

7. We find that the NYISO should make the adjustments necessary to correctly compute market participants' persistent undergeneration charges for service furnished between August 1, 2001 and May 31, 2002, as it already has done for those participants who incurred such charges in other time periods. We also find that the methodology proposed by the NYISO, of recalculating these charges using estimated data, will produce the most accurate results possible under the particular circumstances that existed during the time period at issue. Therefore, we grant the NYISO's request for authorization to recalculate and invoice generators for persistent undergeneration charges for the period August 1, 2001 to May 31, 2002 using estimated data. Thus, we waive the terms and conditions of Rate Schedule 3-A of the Services Tariff to the extent necessary to allow the NYISO to use the alternative calculation methodology described in its waiver request.

By direction of the Commission.

Magalie R. Salas,  
Secretary.