Draft for Stakeholder Review
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April 28, 2009

By Hand Delivery

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: New York Independent System Operator, Inc., *Compliance with Order No. 719*, Docket No. ER09-____-___

Dear Ms. Bose:

In compliance with Paragraph 578 of the Commission's final rule on *Wholesale Competition in Regions with Organized Electric Markets* ("Order No. 719"),[1] and with Section 35.28(g)(6) of the Commission's regulations, the New York Independent System Operator, Inc. ("NYISO") respectfully submits this compliance filing. As is discussed in more detail below, this compliance filing proposes a number of revisions to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") in response to Order No. 719's market monitoring directives. This compliance filing also demonstrates that the NYISO's existing tariffs and market design already satisfy, or will soon satisfy, Order No. 719's requirements with respect to: (i) demand response and market pricing during periods of operating reserve shortage; (ii) responsiveness to customers and other stakeholders; and (iii) facilitating long-term power contracts. The NYISO is therefore not proposing any tariff revisions in these three areas at this time.

Finally, the NYISO anticipates that its independent market advisor, Potomac Economics Ltd, will be submitting a separate report that will: (i) comply with Order No. 719's requirement that independent market monitors address certain issues; and (ii) support the NYISO's position that its existing pricing rules during operating reserve shortages satisfy Order No. 719's directives.

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[1] Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008), 125 FERC ¶ 61,071 (2008).

I. Communications

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II. Documents Submitted

1. Clean Services Tariff sheets incorporating the tariff revisions and additions that the NYISO is proposing in this compliance filing;

2. Blacklined Services Tariff sheets depicting the tariff revisions and additions that the NYISO is proposing in this compliance filing;

3. Results of the NYISO's most recent customer satisfaction survey; and

4. NYISO staff presentations from stakeholder meetings discussing Order No. 719 compliance.

III. Demand Response and Pricing During Periods of Operating Reserves Shortages

Order No. 719 directed ISOs/RTOs to adopt several reforms to ensure that demand response is treated comparably to other resources. Specifically, they must:

> (1) accept bids from demand response resources in their markets for certain ancillary services on a basis comparable to other resources; (2) eliminate, during a system emergency, certain charges to buyers in the energy market for voluntarily reducing demand; (3) permit ARCs [aggregators of retail customers] to bid demand response on behalf of retail electric customers directly into the RTO's or ISO's organized markets; and (4) modify their rules governing price formation during

> periods of operating reserve shortage to allow the market-clearing price during periods of operating reserve shortage to more accurately reflect the true value of energy.[2]

The NYISO's compliance with each of these requirements is discussed in detail in the following sections.

A. The NYISO Already Allows Demand Side Resources to Participate in All of its Competitive, Bid-Based Ancillary Services Markets on Terms Comparable to Generators

1. Comparable Access to Bid-Based Ancillary Services Markets

The regulations promulgated under Order No. 719 require that:

> Every Commission-approved independent system operator or regional transmission organization that operates organized markets based on competitive bidding for energy imbalance, spinning reserves, supplemental reserves, reactive power and voltage control, or regulation and frequency response ancillary services (or its functional equivalent in the Commission-approved independent system operator's or regional transmission organization's tariff) must accept bids from demand response resources in these markets for that product on a basis comparable to any other resources, if the demand response resource meets the necessary technical requirements under the tariff, and submits a bid under the Commission-approved independent system operator's or regional transmission organization's bidding rules at or below the market-clearing price, unless not permitted by the laws or regulations of the relevant electric retail regulatory authority.

The NYISO administers bid-based day-ahead and real-time markets for three "Operating Reserves" products,[3] which are the functional equivalents of the spinning and supplemental reserve services under the Commission's *pro forma* Open Access Transmission Tariff ("OATT"). It also administers bid-based day-ahead and real-time markets for "Regulation Service,"[4] which is the functional equivalent of the *pro forma* regulation and frequency response service.

On May 23, 2008, the Commission conditionally accepted NYISO tariff revisions that "allow Demand Side Resources to offer Operating Reserves and Regulation Service

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2 Order No. 719 at P 15, 18 C.F.R. § 35.28.

3 *See* Schedule 4 of the NYISO Services Tariff.

4 *See* Schedule 3 of the NYISO Services Tariff.

into the NYISO-administered markets on terms comparable to generators . . . ."[5] Under the accepted tariff provisions, Demand Side Resources that satisfy applicable technical requirements may offer Operating Reserves or Regulation Service in the same manner as generators, *i.e.*, by submitting availability bids into either the Day-Ahead or real-time markets. The NYISO optimizes their offers along with those from generators and schedules capacity sufficient to meet its total Operating Reserve and Regulation Service requirements on a least as-bid cost basis. Consistent with the structure of the NYISO's fully co-optimized market design, and consistent with the NYISO's treatment of generators, Demand Side Resources must bid as if they were offering energy.[6] The NYISO places no limit on the quantity of demand response that may be offered into its markets.

The Services Tariff defines "Demand Side Resource" as:

> A Resource located in the [New York Control Area] that is capable of controlling demand in a responsive, measurable and verifiable manner within time limits, and that is qualified to participate in competitive Energy, Capacity, Operating Reserves or Regulation Service markets, or in the Emergency Demand Response Program pursuant to this ISO Services Tariff and the ISO Procedures.

This is comparable to the definition of "demand response resource" in the Commission's regulations as a "resource capable of providing demand response," with "demand response" defined as "a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy."[7]

Consequently, the fact that the NYISO has already implemented tariff revisions that enable Demand Side Resources that meet all "necessary technical requirements" to participate in all of the NYISO's bid-based ancillary service markets fully satisfies Order No. 719. With respect to those "necessary technical requirements," the May 2008 Order noted that the NYISO could not accept bids from Demand Side Resources that were unable to meet a one-hour "sustainability" requirement imposed by Northeast Power Coordinating Council ("NPCC") reliability rules.[8] The "sustainability" requirement was subsequently modified at the NYISO's recommendation.[9] On March 11, 2009, the

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[5] *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,203 at P 1 (2008) ("May 2008 Order").

[6] May 2008 Order at n.3

[7] *Id.*

[8] *Id.* at P 30.

[9] Specifically, Section 3.7 of the Northeast Power Coordinating Council's A-6 operating reserve criteria was clarified so that it was no longer applicable to Regulation Service on December 29,

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NYISO submitted proposed tariff revisions to better accommodate the participation of "Limited Energy Storage Resources" ("LESRs"), such as advanced flywheel and battery technologies, in its Regulation Service Market.

LESRs are characterized by their inability to sustain continuous operation at maximum energy withdrawal or maximum energy injection for a minimum period of one hour.[10] The NYISO's proposed tariff revisions make special provisions that reflect LESRs' unusual characteristics, *e.g.*, by exempting them from the requirement to offer energy, but otherwise treat them comparably to generators to the greatest extent practicable.

Because LESRs have characteristics of both generators (when injecting energy or "discharging") and loads (when withdrawing energy or "charging") it is unclear whether they even fall under the regulatory definition of "demand response resource" and are thus subject to Order No. 719. The NYISO is taking no position on this question, and sees no reason for the Commission to address it at this time. Even if LESRs were demand response resources, the NYISO has already filed tariff revisions that allow them to participate in its bid-based ancillary services markets on terms comparable to generators to the maximum extent possible given applicable reliability requirements. Thus, to the extent that Order No. 719 is applicable to LESRs, the NYISO's submission of the March 11, 2009 tariff filing has satisfied [or will satisfy if approved by the Commission]Order No. 719's competitive bidding mandate with respect to them.

The NYISO does not operate "organized markets based on competitive bidding" for "Voltage Support Service,"[11] which is the NYISO's version of "reactive power and voltage control." Voltage Support Service is therefore not subject to Order No. 719's requirements. Similarly, the NYISO also provides compensation for "Quick Start Reserves,"[12] a unique product that has no analogue in the *pro forma* OATT. As with Voltage Support Service, the NYISO does not operate a bid-based market for Quick Start Reserves and it is therefore outside the scope of Order No. 719. Moreover, this is a service that may only be provided by specific generation facilities in a specific location that must comply with a particular New York State reliability rule that applies exclusively to them.[13]

2008. The one hour sustainability rule still applies, however, to potential providers of Operating Reserves. In addition, there is a separate New York State Reliability Council reliability rule that continues to restrict some resources' ability to provide Operating Reserves.

[10] An energy storage resource that did not have this limitation could already participate in the NYISO markets as a generator.

[11] *See* Schedule 2 of the NYISO Services Tariff.

[12] *See* Schedule 6 of the NYISO Services Tariff.

[13] *See Astoria Generating Company, L.P.*, 101 FERC ¶ 61,275 at n. 2 (2002) ("Under [New York State Reliability Council] rules, the Gowanus and Narrows gas turbines are to be placed in Quick Start Mode when certain contingency circumstances are present . . . .")

Finally, in the NYISO system, "energy imbalance" is not a separate ancillary service. Energy imbalances are instead handled through the NYISO's real-time energy market. The Commission has previously recognized that the NYISO's real-time energy market "encompasses" energy imbalance service.[14] Given that there is no bid-based "imbalance energy" ancillary service in New York there is no Order No. 719 compliance obligation for the NYISO in this area. At the same time, Demand Side Resources are already eligible to receive real-time energy payments through their participation in the existing Emergency Demand Response Program ("EDRP") or through participation in the NYISO's ICAP Market as Special Case Resources.[15]

2. Developing Customer Baselines

Order No. 719 states that "customer baselines are an important factor in the appropriate compensation for demand response resources" and that ISOs/RTOs "should describe in their compliance filings their efforts to develop adequate customer baselines."[16]

The NYISO currently uses three different methodologies for setting customer baselines. The first applies to Demand Side Resources participating in the ICAP markets. The second covers EDRP participants as well as Special Case Resources and the Day-Ahead Demand Response Program ("DADRP") resources receiving energy payments.[17] The third, and most germane to Order No. 719's emphasis on ancillary services markets, pertains to Demand Side Resources that are providing ancillary services. Under the third methodology, the baseline is defined as the Demand Side Resource's actual load immediately prior to the beginning of its response to a real-time ancillary services schedule from the NYISO.[18] The NYISO does not rely on historic data to set the baselines for participants in its ancillary services markets because those markets are directly integrated into its real-time dispatch and because participants in them may receive changing instructions for each interval. In addition, the DSASP resources are modeled as synchronized at zero, *i.e.*, the NYISO is not using its current load level to dispatch, so the load prior to the dispatch interval is a more appropriate load level to compare with their interval by interval dispatch to determine their performance.

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[14] *See, e.g., Niagara Mohawk Power Corp., et al.*, 123 FERC ¶ 61,241 at P 20 (2008).

[15] EDRP participants earn the greater of $500 MWh or the prevailing locational based marginal price for reducing demand at the NYISO's direction. Special Case Resources are likewise eligible for real-time energy payments if they reduce their demand during reserve shortage events. Demand Side Resources may either participate in the ICAP markets as SCRs or take part in the EDRP but may not do both simultaneously.

[16] Order No. 719 at P 57.

[17] **Cite.**

[18] *See, e.g.,* Presentation by Ms. Donna Pratt on behalf of the NYISO at the January 2009 New York Market Orientation Course, Slide No. 18, <*http://www.nyiso.com/public/webdocs/services/market_training/workshops_courses/nymoc/8_demand_response_01_2009.pdf*>.

The NYISO believes that its current approach to defining customer baselines for Demand Side Resources participating in its ancillary services markets is appropriate. Because this methodology was only recently established through the stakeholder process that resulted in Demand Side Resources participating in the ancillary services markets[19] and because its stakeholders appear to be satisfied with it, the NYISO is not considering any modifications to the methodology at this time.

3. Demand Side Resource Bidding Parameters

Order No. 719 requires ISOs/RTOs to allow demand response resources to specify the following in their bids: (1) A maximum duration in hours that the demand response resource may be dispatched; (2) A maximum number of times that the demand response resource may be dispatched during a day; (3) A maximum amount of electric energy reduction that the demand response resource may be required to provide either daily or weekly.[20]

The NYISO is already in compliance with this requirement. Like generators, Demand Side Resources must include "Upper Operating Limits" in their offers that specify the maximum amount of demand that they will be able to reduce in normal and emergency conditions for each hour of the Dispatch Day.[21] They must also specify their "Maximum Number of Startups per Day" and their "Minimum Run Time" and "Minimum Down Time," which together effectively determine the maximum number of times that they may be dispatched during a day.[22] In addition, Demand Side Resources submit other economic bid parameters, including their "Minimum Generation Bids" and "Start-Up Bids," as well as the price at which they would be willing to provide various ancillary services or energy.[23] As the NYISO activates its Ancillary Services using the economic bids of the available resources, Demand Side Resources that wish to participate in the ancillary services markets may reflect their ability to respond to real-time energy schedules through their hourly incremental energy bids.[24]

By using these mechanisms to structure their bids, especially the flexibility provided by the NYISO's use of hourly bidding,[25] Demand Side Resources have the ability to practically and effectively restrict the maximum number of hours that they may be dispatched, the maximum frequency of their dispatch during a day, and the maximum

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[19] *See* (August 2007 and May 2008 PRLWG presentations.)

[20] Order No. 719 at P 81; 18 C.F.R. § 35.28(g)(1)(i)(B).

[21] *See* Sections 2.48a and 2.118a of the Services Tariff.

[22] *See* Services Tariff, Attachment D.

[23] *See* Services Tariff at Sections 2.106 and 2.172f.

[24] *See* March 2008 DSASP Filing letter at 11.

[25] Some other ISOs/RTOs do not support hourly bidding and instead require Demand Side Resources to bid for a twenty four hour period which affords them less flexibility.

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number of times that they may be dispatched during a given day or week. Consistent with Commission policy, they are also able to avoid unwanted obligations to supply energy.[26]

The NYISO and its stakeholders have discussed whether it would be desirable to create additional bidding parameters that would allow Demand Side Resources that are offering ancillary services to expressly limit their participation, *e.g.*, their maximum daily energy reduction. There was no stakeholder interest in creating new bidding parameters given that: (i) Demand Side Resources already have bidding tools that provide all of the functionality required in Order No. 719's regulations; and (ii) establishing new "express" bidding parameters would bring no additional benefit but would be time-consuming, expensive, and would consume resources that stakeholders prefer be devoted to other initiatives.

Consequently, the NYISO believes that its existing set of bidding parameters, and the ways in which Demand Side Resources can use them to structure their bids to prevent themselves from being dispatched more frequently or for longer periods than they desire, or from being required to provide products that they do not wish to offer, fully satisfies Order No. 719's requirements.

B. The NYISO Does Not Assess the Type of Deviation Charges that Order No. 719 Requires ISOs/RTOs to Waive During System Emergencies

Order No. 719 requires that:

> A Commission-approved independent system operator or regional transmission organization with a tariff that contains a day-ahead and a real-time market may not assess a charge to a purchaser of electric energy in its day-ahead market for purchasing less power in the real-time market during a real-time market period for which the Commission-approved independent system operator or regional transmission organization declares an operating reserve shortage or makes a generic request to reduce load to avoid an operating reserve shortage.

Order No. 719 also clarifies that neither physical nor "virtual" purchasers should be subject to deviation charges.

The NYISO does not currently assess a deviation charge on either physical or virtual purchasers of electric energy in its Day-Ahead market that purchase less power in the real-time market during a real-time operating reserve shortage or a load reduction

[26] Order no. 719 at P 52.

intended to avoid such a shortage.[27] There is thus no need for the NYISO to propose any tariff revisions in response to Order No. 719's requirements on this issue.

C. The NYISO Is Working to Expand Opportunities for Aggregators to Bid Demand Response on Behalf of Retail Customers Directly into the Markets that it Administers

The regulations promulgated under Order No. 719 require that:

> Each Commission-approved independent system operator and regional transmission organization must permit a qualified aggregator of retail customers to bid demand response on behalf of retail customers directly into the Commission-approved independent system operator's or regional transmission organization's organized markets, unless the laws and regulations of the relevant electric retail regulatory authority expressly do not permit a retail customer to participate.

Order No. 719 also notes that the reference to "organized markets" in the quoted text refers to the same competitive bid-based ancillary services markets that ISOs/RTOs must allow Demand Side Resources to participate in and that aggregators must comply with any necessary technical requirements under ISO/RTO tariffs.[28]

The NYISO already permits demand response aggregators to bid on behalf of small resources into its Day-Ahead Energy Market.[29] Aggregators are also active participants in the NYISO's Installed Capacity market and in its EDRP.[30]

The NYISO is working with its stakeholders to define the technical requirements that will govern aggregators of small Demand Side Resources bidding directly into its ancillary services markets. The NYISO is currently placing a special emphasis on ISO/RTO Council ("IRC") sponsored efforts to develop rules that will make it possible for Plug-In Hybrid Electric Vehicles ("PHEV") to participate in the ancillary services markets. PHEV and non-PHEV aggregation efforts face a largely common set of communications and control issues. Because of technical differences between PHEVs and other small Demand Side Resources that might be aggregated the NYISO anticipates that once work on common infrastructure issue is complete it will be most efficient for it

[27] *Wholesale Competition in Regions with Organized Electric Markets,* Advance Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,617 at P 63 (2007). (clarifying that the proposed deviation charge rules are not intended to change the normal operations of two settlement systems).

[28] *See* Order No. 719 at P 161.

[29] **Cite.**

[30] 97.5% of all resources participating in the NYISO's ICAP Special Case Resource program do so as part of an aggregation. New York Independent System Operator, Inc., Compliance Filing - Attachment 1 at 4 and Table 1, Docket Nos. ER01-3001-022 and ER03-647-013 (filed January 15, 2009).

establish rules for PHEV and non-PHEV resources on parallel tracks, with non-PHEV aggregation likely to move more quickly.

Unlike the EDRP and ICAP program, which require only after-the-fact validation of aggregator performance, adequate real-time communications and telemetry requirements must be in place before aggregators can enter the ancillary services markets. Generators and Demand Side Resources that are currently authorized to participate in the NYISO's ancillary services markets must satisfy such requirements so applying them to aggregators is entirely consistent with the Commission's comparable treatment policy. Measurement and verification rules for the aggregations, potential local reliability rule changes and performance and payment requirements must also be developed before aggregations could be integrated into the ancillary services markets.

The NYISO is in the process of working through these aggregation issues with its stakeholders. Between now and October it intends to work through its stakeholder Price Responsive Load Working Group to develop market rule changes needed to allow aggregators to provide ancillary services, including baseline calculations, metering requirements, and settlement rules. The NYISO will also use this time to identify and pursue any necessary changes to NPCC or New York State Reliability Council rules that could limit participation by aggregators.

At the same time, the NYISO continues to work through the IRC Markets Committee to explore future means of further integrating small Demand Side Resources directly into its markets. The NYISO expects to report on the results of these activities in October as is required by Order 719.

It was not possible for the NYISO to complete all of these efforts and propose tariff revisions to govern aggregators' provision of ancillary services by the deadline for making this compliance filing. This was in part because of the magnitude of the technical challenges and in part because the NYISO has also been focused on implementing new procedures to allow participation by LESRs in its ancillary services markets and in defining "Demand Response Information System" requirements and evaluating commercial technologies to support that initiative (which is discussed in Section III.E below). To the extent that the Commission interprets its regulations as requiring ISO/RTOs to submit tariff revisions in the near-term that would permit technically qualified aggregators to bid demand response directly into bid-based ancillary services markets the NYISO respectfully requests that the Commission allow it to address the technical issues described above and to complete its examination of the possibility of allowing smaller Demand Side Resources to participate directly in its markets before proposing aggregation related tariff changes for its stakeholders to review. The NYISO proposes to report on its progress in October, at the same time that it reports on smaller Demand Side Resources.

D. The NYISO's Market Design Already Allows Market-Clearing Prices During Periods of Operating Reserves Shortages to Reach a Level that Rebalances Supply and Demand While Preserving Reliability and Providing for Mitigation of Market Power

Pursuant to the regulations promulgated under Order No. 719:

> Each Commission-approved independent system operator or regional transmission organization must modify its market rules to allow the market-clearing price during periods of operating reserve shortage to reach a level that rebalances supply and demand so as to maintain reliability while providing sufficient provisions for mitigating market power.[31]

Order No. 719 explains that ISOs/RTOs may comply with this requirement in whatever way best suits regional needs and stakeholder preferences, including by establishing:

> [A] demand curve for operating reserves, which establishes a predetermined schedule of prices according to the level of operating reserves. As operating reserves become shorter, the price increases.[32]

Each ISO/RTO "proposing to reform or demonstrate the adequacy of its existing market rules in this area must provide an adequate factual record for the Commission to evaluate its proposal."[33] The Commission will make its determinations by considering whether the proposal or demonstration would satisfy six factors, which are noted below.

The NYISO was the first ISO/RTO to introduce ancillary services demand curves as a means to incorporate scarcity pricing provisions into its markets (and to capture other market design efficiencies). It implemented demand curves for both Operating Reserves and Regulation Service in February 2005 and has used them to set real-time clearing prices during operating reserve shortages ever since. The NYISO's successful experience appears to have been a principal reason why the Commission first proposed making the use of a demand curve one of its four representative scarcity pricing options in the rulemaking that culminated in Order No. 719.[34]

The NYISO's ancillary services demand curves were originally established through a consensus-driven multi-year stakeholder process and the NYISO believes that

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31 18 C.F.R. § 35.28(g)(1)(iv)(A).

32 Order No. 719 at PP 221 and 234-235.

33 Order No. 719 at P 238. Order No. 719 also specifies that "any change in market rules to implement the proposed reforms must consider the issue of market power and the RTO or ISO proposing reform must address the adequacy of any market power mitigation." This requirement does not apply to the NYISO because it is not proposing any tariff changes in this area.

34 **Cite.**

the overwhelming majority of its stakeholders today favor their continued use. There have been no complaints or other proceedings before the Commission questioning whether the demand curves were set at appropriate levels.

The existing demand curves have a proven record of allowing market-clearing prices to rise in response to scarcity during shortage conditions while also preserving reliability and preventing market power abuses. Every year since their inception, the NYISO's independent market advisor has evaluated their performance in its annual reports. Most recently, the 2007 State of the Market Report ("SOMR"), explained that the NYISO's:

> [R]eal-time market uses demand curves to limit the costs of procuring ancillary services and to better reflect the value of ancillary services and energy in prices under shortage conditions. Without demand curves, the model would incur unlimited costs in order to satisfy the reserves requirement and the regulation requirement. In cases where sufficient reserves do not exist, a model without demand curves fails to reflect the reserve shortage in the clearing prices for energy or ancillary services. But, in the NYISO market, the real-time model reduces reserves and regulation purchases when the procurement costs rise to extreme levels. The demand curves provide the model with a rational basis for prioritizing high-value reserves over lower value reserves under shortage conditions and setting prices appropriately.[35]

The 2007 SOMR goes on to note that the ancillary services demand curves are a feature that has "improved the operations of the system and enabled prices to better reflect the economic value of reliability."[36] It also demonstrates that shortage pricing rules were only triggered during authentic periods of physical shortage in 2007.[37]

In addition, the NYISO has special administrative scarcity pricing rules that apply during periods when Demand Side Resources prevent a shortage of reserves (either State-wide or in the constrained eastern New York area).[38] When this rule is triggered, real-time clearing prices may be increased to levels that coincide with those paid to the Demand Side Resources that avoided the reserve shortage. Although this rule has not been activated frequently, the independent market advisor has noted that it "helps reflect

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[35] *2007 State of the Market Report New York ISO*, at 43-44 (August 2008) ("SOMR").

[36] *Id.* at 48-49, 92.

[37] *Id.* at 90-91. (The shortage pricing rules only came into play in the East in 2007.)

[38] *See New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111 (2004) (accepting revisions to the NYISO's scarcity pricing rules); *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,339 (2003) (accepting scarcity pricing rules). The administrative rules only apply when the NYISO activates Special Case Resources or EDRP and, but for the load reduction, would have faced a shortage of 30-Minute Reserves or of eastern ten minute reserves. They are not invoked often and typically only come into play on critical peak load days.)

in real-time clearing prices the cost of maintaining adequate reserve levels." As with the NYISO's use of a demand curve, Order No. 719 identified this kind of shortage pricing rule as another example of the type of rule all ISOs/RTOs should consider implementing.[39]

Given its independent market advisor's findings regarding the success of its existing shortage pricing rules the NYISO believes that they satisfy Order No. 719's requirements and that there is no need for it to modify them or to add new rules. During the stakeholder process that preceded this compliance filing no stakeholder proposed that the NYISO adopt an alternative scarcity pricing regime.

The NYISO understands that its independent market advisor will be submitting a separate report that explains how the NYISO's existing shortage pricing regime satisfies the six factors set forth in Order No. 719[40] and the Commission's overarching policy goals.

E. Remaining Barriers to Comparable Treatment of Commission-Jurisdictional Demand Response Resources

Order No. 719 requires each ISO/RTO to "assess and report on any remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction" including any findings and proposed solutions.[41] The reports must identify any "significant minority views."

The NYISO has engaged its stakeholders in discussions regarding possible remaining barriers to the integration of demand response in the NYISO's markets, on several occasions since the issuance of Order No. 719.[42]

Based upon these stakeholder discussions, the NYISO believes that there are no longer any significant barriers to the comparable treatment of jurisdictional demand response resources in New York. That is not to say that the NYISO does not believe that further improvements in its Demand Side Resource rules are possible. Indeed, the NYISO is already seeking a vendor to assist in the development of an automated Demand Response Information System ("DRIS"). The DRIS will replace existing manually-intensive procedures. It will be better integrated with other NYISO software systems, track performance, enable participants to submit data more easily, and support more timely settlements. The NYISO expects that the DRIS will reduce the administrative

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[39] *See* Order No. 719 at P 237 **(Quote rule suggesting that ISOs/RTOs set the MCP during an emergency for all supply and demand at the EDRP price (Greater of $500 or LBMP in NY).**

[40] Order No. 719 at __.

[41] *Id.* at P 274.

[42] These issues were addressed at the meetings of the NYISO's Price Responsive Load Working Group ("PRLWG") on December 8, 2008, January 29, 2009, and March 2, 2009.

burdens and costs currently facing both the NYISO and potential Demand Side Resources and encourage greater demand side participation.

A longer term NYISO goal related to demand response is to support the development of a Smart Grid.[43] Among other benefits, a Smart Grid would give consumers ready access to real-time price signals and other information about grid conditions that would enable them to make more informed real-time electricity usage decisions. A Smart Grid would thereby accommodate the establishment of a real-time retail dynamic pricing for end-use customers which would strongly encourage more efficient participation by Demand Side Resources.

The NYISO believes that the majority of its stakeholders support its view that there are not any significant remaining barriers to Demand Side Resources. The NYISO is aware, however, that a minority of stakeholders favor tariff changes that would allow Demand Side Resources to participate directly in the real-time energy market much as they already participate in the Day-Ahead Energy market. Although the NYISO is not opposed in principle to this suggestion it believes that it would be most practical to defer action on it until after more is known about potential changes related to the development of the Smart Grid and real-time dynamic pricing for end-users. This is because accommodating demand side participation in real-time energy markets will almost certainly require significant new telemetry investments and existing, non-Smart Grid, technologies are likely not the best option for conveying the necessary price information to participating resources.

In addition to the question regarding demand side participation in the real-time energy market and the ongoing effort to incorporate aggregators into the ancillary services markets (discussed above in Section III.C__) the NYISO's stakeholders have also offered the following suggestions:

- Some stakeholders have asked that the NYISO to provide contacts at each New York Transmission Owner ("NYTO") so that questions about telemetry requirements for Demand Side Resources in the ancillary services markets could be directed properly. The NYISO has raised this issue with the NYTOs. Similarly, some stakeholders have expressed concern about registration delays facing Demand Side Resources seeking to enter the ancillary services markets. The NYISO is discussing this issue with the NYTOs, which are the entities responsible for informing the NYISO of where resources are electrically located and for establishing local telemetry and interconnection requirements. The NYISO is discussing possible ways to expedite registration with the NYTOs.

- Some stakeholders have asked whether the NYISO could reduce the existing minimum size requirement (1 MW) for Demand Side Resource participation in the ancillary services markets. The NYISO does not have any current plans to

[43] *Smart Grid Policy*, 125 FERC ¶ 61,071 at PP 37-39 (2009).

change this requirement because it is a basic component of its market software and because the same requirement applies to generators. The NYISO anticipates that its ongoing efforts to further accommodate demand response aggregators will resolve this concern as a practical matter.

Finally, as is noted in Section VIII, below, the NYISO understands that its independent market advisor will be submitting its own compliance report that will discuss any other "remaining barriers" that it may have identified.

F. The NYISO Is Complying With Order No. 719's Other Demand Response Requirements Through Its Participation in the IRC

Order No. 719 requires each ISO/RTO to "file a proposal to adopt reasonable standards necessary for system operators to call on demand response resources, and mechanisms to measure, verify, and ensure compliance with any such standards."[44] In response to this requirement, the NYISO has worked collaboratively with other IRC members and with other industry sectors to create business practices for the measurement and verification of wholesale electricity demand response. The business practices were developed and submitted through the North American Energy Standards Board's ("NAESB") subcommittee process, approved by the NAESB WEQ Executive Committee on February 10, 2009 and ratified by the NAESB members on March 16, 2009. NAESB has filed the new standards in a status report dated April 17, 2009 in docket RM05-5-000).

Order No. 719 also directs ISOs/RTOs to "coordinate with each other in the development of such technical requirements, and provide the Commission with a technical and factual basis for any necessary regional variations."[45] In addition to participating in the development of the business practices described in the preceding paragraph, the NYISO has also been working with other IRC members on a mapping of current demand response program characteristics to these standards. This analysis has been recently made available **(Confirm that IRC posting is made by April 28th)** in the form of a matrix posted on the IRC website and has been used to highlight regional variations in technical requirements.[46] The matrix also provides additional information on each ISO/RTOs demand response programs. The NYISO anticipates that this posting will be helpful to existing and potential demand response providers and is committed to working with the IRC to keep it up to date.

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[44] Order No. 719 at P 61.

[45] *Id.* at P 59.

[46] **Cite. (IRC Website)**

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IV. Long-Term Power Contracting In Organized Markets

Order No. 719 requires each ISO/RTO to "dedicate a portion of its web site for market participants to post offers to buy or sell power on a long-term basis."[47] Each entity's compliance filing must "explain the actions that the RTO or ISO has taken or plans to take to comply with the long-term contracts bulletin board requirement and provide information on the bulletin board the RTO or ISO has chosen to implement."[48]

In compliance with this requirement, the NYISO will provide a link on its website to a multi-ISO/RTO "bulletin board" page that will be hosted by the PJM Interconnection, L.L.C. ("PJM"). On an April 2, 2009 conference call, the NYISO's stakeholders were supportive of this proposal with representatives of generators, industrial customers, and traders strongly favoring the broader scope and greater efficiency that a multi-ISO/RTO bulletin board would bring.

The multi-ISO/RTO bulletin board will allow willing sellers and buyers in the participating ISO/RTO regions to voluntarily post and read offers for long-term power. Neither the NYISO nor any of the other ISO/RTO participants will play any role beyond facilitating the posting of this information and will not review postings for accuracy. Consistent with Commission policy, the bulletin board will make it clear that neither the NYISO nor the other participating ISOs/RTOs will have any liability for the content of user postings.[49]

The multi-ISO/RTO bulletin board is expected to launch in September 2009.[50] The NYISO understands that additional information concerning the bulletin board will be set forth in PJM's Order No. 719 compliance filing.

In compliance with P 302 of Order No. 719, the NYISO reports that it does not expect the costs of establishing or maintaining the bulletin board to be significant. It therefore is not proposing any specific new cost recovery provisions in this area. The NYISO understands that PJM will recover the costs of the bulletin board through the same Scheduling Control and Dispatch Service charges that it currently uses to recover other website costs.[51]

V. Market Monitoring Policies

(To be inserted)

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[47] Order No. 719 at P 301; 18 C.F.R. § 35.28(g)(2).

[48] *Id.* at P 309.

[49] *Id.* at P 304.

[50] *See* **(cite PJM Website)**

[51] *Id.*

VI. Responsiveness to Customers and to Other Stakeholders

Order No. 719 required ISOs/RTOs to "establish a means for customers to and other stakeholders to have a form of direct access to the board of directors, and thereby to increase the board of directors' responsiveness to these entities."[52] Each ISO/RTO must therefore submit a compliance filing demonstrating that it has in place or will adopt, practices and procedures to ensure that its board of directors is responsive to customers and other stakeholders." "Responsiveness" is defined as an ISO/RTO Board's "willingness, as evidenced in its practices and procedures to directly receive concerns and recommendations from customers and other stakeholders, and to fully consider and take action in response to issues that are raised." The Commission indicated that it would evaluate responsiveness based on four criteria: "(1) inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority interests; and (4) ongoing responsiveness.[53] Each ISO/RTO must also post its "mission statement or "organizational charter."[54]

As the NYISO has previously explained in this proceeding,[55] it has had a successful system of "shared governance" since its inception in 1999. Under shared governance, the NYISO Board is independent of stakeholders but may not make a Section 205 filing to amend the NYISO tariffs or the agreements that established the NYISO, without the concurrence of a 58 percent super-majority of the stakeholder Management Committee.[56] This distinguishes the NYISO from those ISOs/RTOs that have "unilateral" rights to make Section 205 filings.

Stakeholders play a central role in collaborative processes that establish the NYISO's annual operating and capital budget, corporate goals, annual project priorities, five year budget targets, and staff incentives through the Budget and Priorities Working Group. The Management Committee votes on the annual budget before it is submitted to the NYISO Board for approval.[57] Stakeholders likewise review actual performance compared to budget each year. They participate in a consensus-based nomination and selection system for new directors through the Board Selection Subcommittee, which is comprised of two members of each stakeholder sector (ten in total). [58] As is noted below,

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52 Order No. 719 at P 477.

53 *Id.*

54 *Id.* at P 478.

55 *See New York Independent System Operator, Inc.*, Response to the Commission's June 22, 2007 Advanced Notice of Proposed Rulemaking at 5-15, Docket No. RM07-19 (Sep. 14, 2007). ("NYISO ANOPR Comments") and *See New York Independent System Operator, Inc.*, Response to the Commission's February 22, 2008 Notice of Proposed Rulemaking at 19-21, Docket No. RM07-19 (April 21, 2008). ("NYISO NOPR Comments").

56 **Cite ISO Agreement Section 19.01. Note exigent circumstances exception and Cite Lake Erie example.**

57 **Cite.**

58 **Cite.**

stakeholders have ample opportunities to interact, both collectively and individually, with the Board. The NYISO believes that shared governance has fostered consensus-building among market participants and fosters collaboration and communication between the Board and stakeholders.

Shared governance is superior to both the "board advisory committee" and the "hybrid board" models that the Commission has presented as suitable mechanisms for enhancing ISO/RTO responsiveness. It resolves what the ANOPR described as the "natural tension" between the Board's independence and responsiveness by involving stakeholders directly in the NYISO's decision-making process, without compromising the Board's independence or effectiveness in the way that a hybrid board structure could. Shared governance also empowers stakeholders more completely than "the board advisory" model. Shared governance provides for both direct stakeholder access to the Board and for stakeholder voting. A "board advisory" model provides only for the former.

Most of the NYISO's stakeholders have expressed strong support for the shared governance system and no stakeholder expressed any interest in changing its basic structure in the stakeholder process that preceded this compliance filing.[59] In particular, the NYISO raised this issue with its principal stakeholder committees, *i.e.*, the Management Committee and the Business Issues Committee, on several occasions in recent months and has not received any comments indicating a desire for any substantive changes to the existing NYISO governance process. The issue was also considered at least once in discussions between the NYISO's Board and stakeholders at the "Liaison Committee" (see below.) The NYISO will work with stakeholders to develop a process for greater stakeholder input when the NYISO is making a compliance filing and report on its progress in October.

Consequently, the NYISO believes that its existing shared governance arrangements more than satisfy Order No. 719's requirements and it is proposing no modifications to them in this compliance filing. The following sections demonstrate the NYISO's compliance with each element of the Order No. 719 regulations in more detail.

A. Inclusiveness

Under Order No. 719, each ISO's/RTO's:

> [B]usiness practices and procedures must ensure that any customer or other stakeholder affected by the operation of the Commission-approved

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[59] Of course the NYISO is not asserting that its shared governance arrangements are perfect. It is always willing to explore improvements with stakeholders and to implement them when necessary to address particular issues. *See, e.g., New York Independent System Operator, Inc.'s Report on Waiver Request*, Docket No. ER09-405-001 (March 11, 2009) (describing the NYISO's voluntary establishment of an Operations Analysis and Services Group to perform daily uplift analyses and report the results to stakeholders each month.)

> independent system operator or regional transmission organization, or its representative, is permitted to communicate the customer's or other stakeholder's views to the independent system operator's or regional transmission organization's board of directors . . . .[60]

Shared governance ensures that "any customer or stakeholder affected by the operation" of the NYISO "is permitted to communicate its views" to the NYISO's Board. The NYISO currently holds, and has held since its inception, monthly "Liaison Committee" meetings that provide stakeholders with a regular opportunity to communicate directly with the Board without "filtering" by NYISO management.[61] The NYISO also sponsors an annual joint Board/Management Committee meeting (open to all stakeholders) which facilitates further communication and gives the NYISO Board and stakeholders an informal opportunity to exchange views and ask questions on subjects of mutual interest and concern.[62]

Individual stakeholders that are aggrieved by decisions made by other NYISO stakeholders may also appeal any Management Committee action directly to the Board. Other stakeholders may submit briefs in opposition to or support of appeals. When appeals arise, the Board may, and frequently has, heard oral arguments prior to making a decision. In addition, stakeholders have the ability to, and have effectively, expressed their collective preferences through their votes on proposed tariff revisions and their input into the NYISO's budgeting processes. Stakeholders also participate directly in the selection of new NYISO directors, through the Board Selection Subcommittee. The NYISO Board has always agreed to select new directors from the slates of candidates recommended by stakeholders.

B. Fairness in Balancing Diverse Interests

Under Order No. 719, each ISO/RTO's:

> [B]usiness practices and procedures must ensure that the interests of customers or other stakeholders are equitably considered, and that deliberation and consideration of Commission-approved independent system operator's and regional transmission organization's issues are not dominated by any single stakeholder category. . . .[63]

The NYISO's existing shared governance framework ensures "that the interests of customers or other stakeholders are equitably considered." The NYISO has previously explained that voting rights are distributed among its stakeholders in a manner that was

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60 Order No. 719 at P 482.

61 *See <Liaison Committee website>.*

62 **Cite.**

63 Order No. 719 at P 482.

carefully established, after years of negotiation and approval by the Commission, to prevent "any single stakeholder category" from dominating the decision making process. In fact, the NYISO's requirement that a measure must have the support of 58 percent of the voting weight of its stakeholders makes certain that even two stakeholder sectors cannot dominate, because at least two sectors plus some members of a third sector must support a measure for it to pass**.**[64]

There is no evidence that the NYISO's stakeholder processes are not fairly balanced[65] and the NYISO has refuted all allegations to the contrary in the rulemaking proceeding that preceded Order No. 719.[66] Notwithstanding unsubstantiated claims of bias against non-traditional suppliers by a non-New York entity early in the rulemaking proceeding, the NYISO's 2008 compliance filing to more fully integrate Demand Side Resources was broadly supported and its recent Section 205 filing on LESRs won unanimous stakeholder approval. More generally, an overwhelming majority of the NYISO's stakeholders recently voted to support an extension of the NYISO's existing rules for allocating its operating costs to customers, along with a systematic procedure for evaluating possible future changes to that allocation. Shared governance's ability to produce a near consensus solution between diametrically opposed stakeholder interests on a classic "zero sum" financial issue is further evidence of its success.

C. Representation of Minority Positions

Under Order No. 719, each ISO/RTO's:

> [B]usiness practices and procedures must ensure that, in instances where stakeholders are not in total agreement on a particular issue, minority positions are communicated to the Commission-approved independent system operator's and regional transmission organization's board of directors at the same time as majority positions . . . .[67]

Minority interests already have direct access to the NYISO Board through the appeals process and the Liaison Committee, as noted above. The NYISO staff alerts the Board in the normal course when there is significant opposition to initiatives or proposals. In order to ensure its full compliance with Order No. 719 the NYISO staff will be required, going forward, to communicate minority positions to the Board through the briefing materials that the directors consider in advance of each Board vote.

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64 *See, e.g., Central Hudson Gas & Elec. Co. et al.*, 88 FERC ¶61,229 (1999) and *New York Independent System Operator, Inc.*, 108 FERC ¶61,231 at P 21 (2004).

65 ***Cite*** earlier study on this issue

66 *See* NYISO ANOPR Comments at 11.

67 Order No. 719 at P 482.

D. Ongoing Responsiveness

Under Order No. 719, each ISO/RTO's:

> [B]usiness practices and procedures must provide for stakeholder input into the Commission-approved independent system operator's or regional transmission organization's decisions as well as mechanisms to provide feedback to stakeholders to ensure that information exchange and communication continue over time.[68]

The NYISO's shared governance system inherently provides for "stakeholder input into RTO or ISO decisions" because stakeholders must vote to approve tariff filings and have influence over director selections and the budgeting process. Stakeholders participate in numerous committee, subcommittee, working group, and task force meetings where they help to develop studies, operating procedures, and other NYISO policies that do not involve Section 205 tariff filings. The NYISO also conducts regular customer satisfaction surveys that provide formal feedback on their views. In addition, the Liaison Committee process provides a mechanism for the Board to give direct feedback to stakeholders by facilitating direct communications between stakeholders and the Board. Finally, as is noted below, the Board ensures the responsiveness of executives and managers by setting performance and incentive compensation criteria based in part on responsiveness.

E. Mission Statement, Guiding Principles, and Commitment to Responsiveness

Finally, Order No 719 requires ISOs/RTOs to post a mission statement and encourages them to include information on their purpose, "guiding principles," and commitment to stakeholder responsiveness.[69]

The NYISO's mission statement has been posted on its website since ______.[70] It states that:

> *The mission of the NYISO, in collaboration with its stakeholders, is to serve the public interest by:*
>
> - *Maintaining and enhancing regional reliability*

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[68] ***Id.***

[69] *Id.* at P 556.

[70] The NYISO does not have a separate "organizational charter." Nevertheless, the documents that created the NYISO and established its responsibilities and obligations are all posted on the NYISO's website at <*http://www.nyiso.com/public/documents/regulatory/agreements.jsp*>.

- *Promoting and operating a fair and competitive electric wholesale market*
- *Achieving these objectives in a cost-effective manner*
- *Providing quality customer service*

The NYISO website also articulates the following "guiding principles":

- *Continually strive to make market and reliability requirements complement each other*
- *Provide a market environment that attracts economically efficient investment in physical infrastructure*
- *Institutionalize Excellence in Execution within the NYISO*
- *Maintain independence of our organization in terms of our objectivity on issues that affect our market*
- *Strictly adhere to existing laws, regulation and tariff requirements*
- *Foster regulatory certainty and market transparency*
- *Operate markets in a non-discriminatory manner with the objective of providing reliable service and economically efficient prices*

Finally, the website specifies several NYISO "core values" two of which are relevant to Order No. 719's focus on responsiveness. They are "Accountability -- Taking personal responsibility to do what needs to be done" and "Customer Focus -- Listening, caring, delivery . . . ."[71] These are far from mere paper commitments. Customer responsiveness and satisfaction levels are both directly linked to the incentive compensation payments that all NYISO staff are eligible to receive.[72]

VII. Additional NYISO Compliance Filing

Order No. 719 requires ISOs/RTOs, "in cooperation with their customers and stakeholders . . . to perform an assessment, through pilot projects or other mechanisms, of the technical feasibility and value to the market of smaller demand response resources providing ancillary services, including whether (and how) smaller resources can reliably

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71 *See* <*http://www.nyiso.com/public/company/about_us/index.jsp*>.

72 *See, e.g.* the NYISO's description of its proposed incentive program for 2009, <*http://www.nyiso.com/public/webdocs/committees/mc_bpwg/meeting_materials/2008-10-17/2009_Incentive_Goals_(BPWG_10.17.08).pdf*>; and its report on its performance in 2008 <http://www.nyiso.com/public/webdocs/committees/mc_bpwg/meeting_materials/2009-02-26/2008_Goals_Chart_-_Final.pdf>.

and economically provide operating reserves and report their findings to the Commission."[73] Assessments are due six months after the date of this filing. As noted above, the NYISO will submit its assessment at that time in a separate compliance filing which will include the results of the joint initiatives undertaken through the IRC Markets Committee.

VIII. Required Reports by the NYISO's Independent Market Monitoring Unit

Order No. 719 requires that each ISO/RTO MMU comment on: (i) its views regarding any remaining barriers to the comparable treatment of demand response in the ISO/RTO footprint; and (ii) the adequacy of the mitigation measures included in the ISO/RTO's shortage pricing proposal.[74] The NYISO understands that its independent market advisor, Potomac Economics, Ltd, which would become the NYISO's independent market monitor under the compliance tariff revisions proposed in this filing, will separately submit its required reports on these matters. In addition, as was noted above in Section __, the NYISO understands that Potomac Economics, Ltd. will provide a more detailed explanation of how the NYISO's existing scarcity pricing rules fully comply with Order No. 719's criteria.

IX. Stakeholder Process

The NYISO discussed the development of this compliance filing at a number of stakeholder meetings. Presentations describing one or more elements of the compliance proposal were made at the December 3, 2008 and February 25, 2009 meetings of the NYISO's Management Committee and at the March 11 and April 14, 2009 of the Business Issues Committee. Demand Side Resource compliance issues in particular were addressed at the December 8, 2008, January 29, 2009, and March 2, 2009 meetings of the Price Responsive Load Working Group. In addition, the NYISO's existing rules governing participation by demand side resources in the competitive ancillary services markets and scarcity pricing were the product of multi-year stakeholder processes that predated Order No. 719 and enjoyed broad stakeholder support.

Based on all of its discussions with its stakeholders, the NYISO believes that there is broad support for its compliance proposals, including the determination that the NYISO's existing arrangements already satisfy Order No. 719's requirements with respect to demand response resources, pricing during operating reserve shortages, and responsiveness. In compliance with P 580, the NYISO states that is aware of no "major dissenting views" that were expressed during the stakeholder process.

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73 Order No. 719 at P 581.

74 *Id.* at P 582.

X. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission accept the proposed compliance tariff revisions, and the demonstrations of compliance included herein, without any conditions or modifications.

Respectfully submitted,
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FERC CCs