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May 13, 2003

TO: Budget Standards and Performance Subcommittee  
FROM: Task Force on Filing NYISO Budget as a Rate  
RE: Rate Filing Options

Conference calls of the Task Force were held on April 17 and May 8 to consider options with respect to the filing of the NYISO budget at FERC. The following options were discussed on the calls:

1. Requiring a §205 Filing For Any Increase in the NYISO's Revenue Requirement

Under the current NYISO governance provisions, a §205 filing would require Management Committee concurrence. If the Management Committee did not concur to a budget increase, the NYISO board would have to make a §206 filing. Under a §205 filing, the higher rate could go into effect prior to FERC action, but would be subject to refund. Under a §206 filing, the higher rate could not be effective until FERC acts. Also, the standard of proof in a §206 filing is generally higher than the standard in a §205 filing. The sense of the Task Force, however, is that, with respect to a proposed increase in the NYISO's budget, there probably would not be a significant difference between the two standards.

2. Unilateral §205 Filing

This option would require FERC approval of a budget increase but would permit the NYISO board to unilaterally file a §205 filing without Management Committee concurrence. This option would allow the higher expenditure level to go into effect subject to refund, even if it

was not approved by the Management Committee.

### 3. Informational Filing

This option would not require FERC approval of an increase in the NYISO budget, but would require the NYISO to make an annual informational filing with respect to its budget. While FERC approval would not be required under this option, the NYISO could be required to address any significant increase in its budget and identify any increases that were not approved by the Management Committee. A specific period could be established for the filing of protests (e.g. 30 days).

#### Consideration of the Options

The option requiring a §205 filing under the normal governance procedures would give market participants the greatest control over the NYISO's budget. Without Management Committee concurrence, the NYISO board would have to make a §206 filing and no increase in charges could be implemented unless FERC found them to be just and reasonable. The primary concern about this option is that it is very rigid, could hinder the operation of the NYISO while a rate increase was pending, and could create uncertainty with respect to the ability of the NYISO to meet its financial commitments.

The option that would permit the NYISO board to make a unilateral §205 filing would provide the NYISO board with more flexibility and allow the increase to go into effect subject to refund, prior to FERC action. The Task Force was concerned, however, that this option might still be more restrictive than necessary. Also, it was noted that if rates went into effect subject to refund, there could be financial uncertainty during that period and, since the NYISO is a not-for-profit entity, any refunds would have to be paid for by transmission customers.

On balance, the Task Force favors the option of an informational filing. While that option imposes the least constraint on the NYISO board's budget setting authority, it also would present the least risk of having a negative effect on the management of the NYISO. While FERC approval for the budget would not be required, it would facilitate FERC oversight of the NYISO budget and establish a procedural structure for market participants to contest the budget.

#### NYISO Position

The NYISO representatives who participated in the conference calls held by the Task Force made it clear that they oppose any filing of the NYISO budget at FERC, and suggested that any concerns with respect to the budget should be addressed within the context of the NYISO budget process and should be considered as part of the Strategic Planning Process. The NYISO representatives were advised that the Task Force was not asked to consider whether a budget filing at FERC should be made, but to review filing options if the BS&P decides to pursue that course of action. This memo does not attempt to summarize the arguments made against a budget filing by the NYISO representatives, which we assume they will make directly to the BS&P.

#### Practice of Other ISOs

It is our understanding that ISO-New England and the California ISO both are required to make §205 filings for increases in their administrative costs, and that PJM and the MISO are not required to make FERC filings. It also appears that the other ISOs have entered into settlement agreements with respect to rate filings.

#### Conclusion

The Task Force recommends that, if the BS&P decides to pursue a budget filing with FERC, an annual informational filing would be the most appropriate type of filing. If the

BS&P decides to continue its consideration of a FERC filing, the Task Force is willing to develop a more detailed proposal for an informational filing. It should be noted that a §205 filing to amend the ISO Agreement and the NYISO tariffs would be necessary to establish a requirement for an annual informational budget filing by the NYISO.

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