

Dispute Resolution Tariff Modifications

Timothy Duffy

*Manager, MMA Production Processes
New York Independent System Operator*

Business Issues Committee

May 3, 2011



Overall Objectives

- ◆ Identify potential improvements and clarifications to the dispute resolution provisions in the NYISO tariffs and agreements.
- ◆ Ensure consistent treatment in Open Access Transmission Tariff, Market Services Tariff and ISO Agreement
- ◆ Retain overall substance of current tariff provisions while allowing choice and avoiding unnecessary expense
- ◆ End the practice of requiring Parties (including the NYISO) to use a dispute resolution process if they choose not to. As is true today, all Parties retain their rights to file a complaint or seek any other remedy from the Commission under the relevant provisions of the Federal Power Act.

Problems with Existing Provisions

- ◆ Overly broad definition of disputes eligible for resolution under Article 11
 - *Requires participation in its mediation or arbitration process even if only one of the disputing parties desires to utilize the Article 11 dispute resolution process. The NYISO believes that use of mediation or arbitration should be agreed to by all parties to the dispute since FERC is always available.*
 - *Existing tariff includes disputes over proposed changes to rules, rates, the Tariffs or Service Agreements. These disputes should be limited to the governance process and/or FERC.*
- ◆ Administratively burdensome
 - *Requires a Dispute Resolution Administrator*
 - *Imposes set of procedures without the option of agreeing on alternative procedures*
 - *A dispute over the interpretation of a rate or Services tariff provision worth \$500,000 or less must go to binding arbitration*
- ◆ Expensive for Party not wishing to pursue arbitration or mediation

Relevant Document Sections Reviewed

- ◆ Market Services Tariff
 - *Section 5; Section 7.4.3; Section 11*
 - *Rate Schedule 6*
 - *Attachments H, M-1, and O*
 - *Section 2.0, relevant definitions*
- ◆ OATT
 - *Section 7.2A.3; Section 12, Sections 21 and 22*
 - *Attachments F, M, S, X, Y, Z and CC*
 - *Section 1.0, relevant definitions*
- ◆ ISO Agreement provisions:
 - *Article 10*
 - *Sections 12.04 and 16.04*
 - *Article 1.0, relevant definitions*

General Dispute Provisions: Scope

- ◆ Scope of Dispute Resolutions Narrowed
 - *Disputes involving the application of existing rates, terms or conditions of service under the Tariffs, ISO Procedures, or Agreements would be eligible for dispute resolution (Underlined language is new)*
 - *Disputes over “proposed changes or modifications of rules, rates, Service Agreements or ISO Tariffs,” would need to be resolved at FERC and would no longer be eligible for NYISO’s dispute resolution activities.*
- ◆ Excludes the use of Section 11 from:
 - *Disputes involving parties’ exclusive rights under the Federal Power Act, or as otherwise provided by law*
 - *Disputes involving applications for changes in rates, terms or conditions of service, or other changes to the ISO Tariffs, ISO Procedures, or agreements to which the ISO is a party*
 - *Disputes for which other Tariff dispute resolution provisions apply. See next slide for list of excluded disputes.*

Disputes Excluded from the Article 11 Process Because Specific Tariff Dispute Resolution Provisions Apply

- ◆ *Disputes regarding the Standard Large Facility Interconnection Procedures or Agreements – currently governed by Attachment X to the ISO OATT*
- *Disputes regarding the Small Generator Interconnection Procedures or Agreements, -- currently governed by Attachment Z to the ISO OATT*
- *Disputes regarding the Local Transmission Planning Procedures, currently governed by Section 4.3 of Attachment Y to the ISO OATT*
- *Disputes over cost estimates provided in interconnection agreements, to be resolved under the interconnection agreement as is currently provided in Attachment S*
- *Disputes regarding a Customer's settlements, not resolved in the ordinary settlement review, challenge, and correction process -- currently governed by Section 7.4 of this ISO Services Tariff or Sections 2.7.4.2 or 2.7.4.3 of the ISO OATT*
- *Disputes regarding certain ICAP-related issues that Section 5 of the ISO Services Tariff expressly indicates are to be governed by Section 5.16 of the ISO Services Tariff*
- *Disputes regarding Centralized TCC Auction or Reconfiguration Auction awards, currently governed by Attachment M, Section 19.9.6 of the ISO OATT*

General Dispute Provisions: Summary

- ◆ Initiation
 - *Parties initiate dispute through written notice to ISO*
 - *Parties then have 30 days in which to resolve the dispute through informal discussions. This is the same procedure we use today – it resolves almost all of the disputes we see today.*
 - *Parties then may opt to pursue non-binding mediation or arbitration (binding or non-binding). Decision must be mutual.*
- ◆ Non-Binding Mediation
 - *Mediator selected by mutual agreement*
 - *To be resolved within 90 days*
 - *Mediator costs shared equally among parties – today each party bears “pro rata” share. Unclear what that means.*
- ◆ Arbitration
 - *Arbitrator selected by mutual agreement*
 - *Binding/Non-binding: at the agreement of the parties*
 - *To be resolved within 90 days*
 - *Losing party pays costs of Arbitrator – this is the case today*
 - *Provision for consolidating arbitration cases*

General Dispute Provisions: Summary

- ◆ Elimination of Dispute Resolution Administrator (DRA)
 - *DRA functions (e.g., identification of resolution mechanism - mediation or arbitration, maintenance of qualified arbitrator list) These functions are put in the hands of disputing parties.*
 - Parties to the dispute are the appropriate source for deciding the approach (mediation or arbitration, binding or non-binding). Decision must be mutual and in writing.
 - Parties to exchange lists of mediators/arbitrators or seek assistance of Commission's Dispute Resolution Service
- ◆ Arbitration Decision
 - *Not automatically binding if dispute < \$500,000*
 - *Binding only if both parties agree in writing*

Attachments H and O Revisions

- ◆ Amendments to Attachment H (Market Mitigation Measures) replace, with a reference to Section 11, a reference to Attachment H and O dispute resolution provisions for Parties with disputes related to sanctions imposed under Section 23.4.3 and for Parties believing a mitigation measure has been improperly applied or withheld.
- ◆ Amendments to Attachment O (Market Monitoring Plan) replace, with a reference to Section 11, the requirement that the Parties must seek binding arbitration and expedited resolution, under the ISO Agreement's dispute resolution provisions (Article 10), for disputes over requested information. Clarifies the right of the ISO to initiate judicial or regulatory proceedings to compel production.

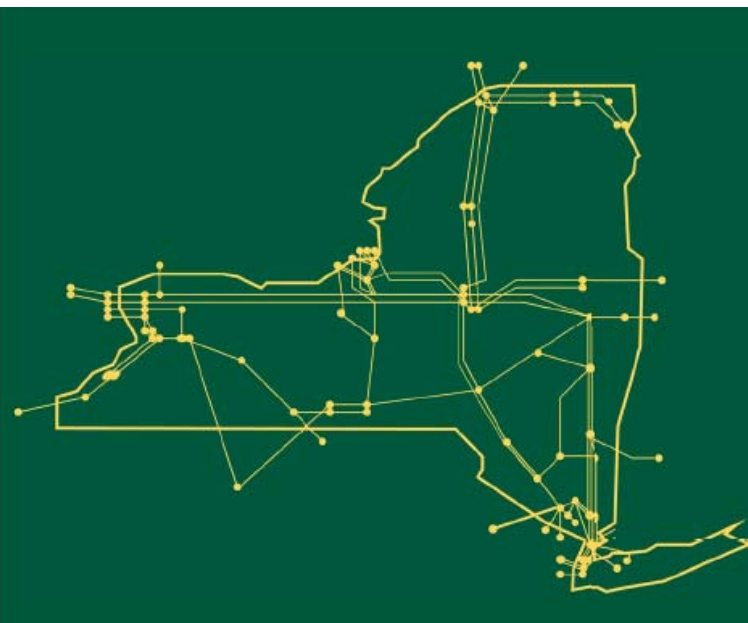
ISO Agreement and the OATT

- ◆ Article 11 of the MST will house the substance of the Dispute Resolution procedures.
- ◆ To ensure consistency between its tariffs and agreements and to avoid any errors that may arise from having similar, but not identical, provisions in its tariffs and agreements, the general dispute resolution provisions in the OATT and the ISO Agreement should be replaced with either a cross-reference to, or a copy of, Article 11 of the Services Tariff.

Schedule

- ◆ 3/14/2011: Initial Discussion at MIWG
- ◆ 4/15/2011: Follow-Up Discussion at MIWG
- ◆ May 2011: BIC and MC Votes
- ◆ June: BOD Approval
- ◆ July: FERC Filing

The New York Independent System Operator (NYISO) is a not-for-profit corporation that began operations in 1999. The NYISO operates New York's bulk electricity grid, administers the state's wholesale electricity markets, and conducts comprehensive planning for the state's bulk electricity system.



[*www.nyiso.com*](http://www.nyiso.com)