

5/28/04 DRAFT

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June ____, 2004

BY HAND

The Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

Elimination of Rate Pancaking on Exports from
the New York Control Area to the New England Control Area

Dear Ms. Salas:

The New York Independent System Operator, Inc. (“NYISO”) and the New York Transmission Owners¹ (the “Joint Filing Parties”) hereby submit, pursuant to Section 205 of the Federal Power Act, revisions to the NYISO Open Access Transmission Tariff (“OATT”) to eliminate the charges the NYISO currently imposes on exports to the New England Control Area. As described in detail below, the elimination of the export charges will take place on the same date on which ISO New England Inc. (“ISO-NE”) or its successor eliminates similar charges on exports to New York. The Joint Filing Parties are also prepared to eliminate the fees on exports to other regions as soon as those regions eliminate their charges on a reciprocal basis

¹ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. (“Con Edison”), LIPA, New York Power Authority (“NYPA”), New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, a National Grid Company, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation.

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on exports to New York. The support of the New York Transmission Owners for elimination of export fees to other regions is based upon the commitments by the New York Public Service Commission (“NYPSC”) that will allow the New York Transmission Owners to recover the revenues otherwise recovered from those export fees through retail rates.

I. Overview of the Filing

The NYISO, the NYPSC and the New York Transmission Owners have been working diligently to eliminate the fees charged in New York on Exports² and Wheel-Through Transactions. These fees are reflected in the Transmission Service Charge (“TSC”), which is applicable to all of the New York Transmission Owners, and the NYPA Transmission Adjustment Charge (“NTAC”).

Two conditions necessary for the elimination of these fees for transactions to the New England Control Area have been met or are expected to be met in the near future. First, the New York Transmission Owners have reached agreements with the NYPSC that would allow the Transmission Owners to be made whole for revenues that would otherwise be unrecoverable. The formula already embodied in the wholesale TSC will permit the New York Transmission Owners to recover a small portion of the lost revenues. The NYPSC has agreed to take the

² Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the NYISO OATT.

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appropriate actions to ensure the recovery in retail rates of the balance of the lost transmission revenues.³ The total charges on exports from New York to New England have been approximately \$10 million per year, based upon historic data.

Second, the proposed tariff changes will become effective on the same date on which New England export fees to New York are also eliminated on a reciprocal and unconditional basis. Elimination of New York's export fees is explicitly conditioned upon the simultaneous elimination of the parallel charges imposed on exports to New York. Unless the export fees on transactions to and from New York and New England are eliminated on a reciprocal and unconditional basis, consumers will not be able to receive the benefits of the market efficiency improvements that are anticipated for both regions.

II. Stakeholder Process

The NYISO's Management Committee, with an affirmative vote of _____, supports this filing.

III. Documents Submitted

The Joint Filing Parties are submitting the following documents:

1. This filing letter;

³ See April 30, 2004 letter from William Flynn, Chairman, New York Public Service Commission, and others to Commissioner Nora Mead Brownell. A copy is provided as Attachment I hereto.

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2. Letter dated April 30, 2004 from William Flynn, Chairman, New York Public Service Commission, and others to Commissioner Nora Mead Brownell (Attachment I);
3. Clean sheets for the NYISO OATT (Attachment II);
4. Blacklined sheets for the NYISO OATT (Attachment III); and
5. A form of *Federal Register* Notice (Attachment IV);

IV. The Filing

In its order conditionally granting RTO status to RTO-NE, the Commission directed the Filing Parties to “include a proposal for eliminating Through and Out Service Charges between RTO-NE and the New York ISO” by December 2004.⁴ This filing provides for the elimination of these charges on transactions from New York to New England. In a January 9, 2004 letter to William J. Museler, President of the NYISO, Chairman Wood indicated that “Elimination of export fees within the Northeast will improve interregional coordination and reduce ‘seams’ within the region.” This filing provides the Commission with a speedy resolution of that issue.

The Joint Filing Parties are hereby revising the necessary sections of the NYISO OATT to eliminate the charges for Exports and Wheel-Through Transactions to the New England Control Area. The changes are to Section 7B of the OATT and to Attachment H of the OATT. Any other charges for exports including, for example, Scheduling, System Control and Dispatch

⁴ *ISO New England, et al.*, 106 FERC ¶ 61,280 P 95 (2004).

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Service, Reactive Supply, and Operating Reserve Service, will remain in place. The language is limited to charges on transactions to the New England Control Area because we anticipate that ISO-New England will agree to make a reciprocal change by simultaneously eliminating its charges for exports (including wheel-through transactions) to New York.

Indeed, as noted, the changes proposed herein will only become effective when charges on exports from the New England Control Area to the New York Control Area are comparably eliminated. Such reciprocity shall not require the NYISO or the New York Transmission Owners to modify existing provisions that are designed to protect the tax exempt status of bonds issued by LIPA, NYPA and Con Edison. Without limiting the generality of the foregoing sentence, reciprocity shall not require changes in: (1) any of the following sections of the NYISO OATT: Sections 5.0, 5.1 and 5.2, including all subsections thereunder; (2) any of the following provisions of the Agreement Between New York Independent System Operator and Transmission Owners ("ISO/TO Agreement"): Sections 3.04(D); 3.12 and 6.2; and (3) any of the following sections of the NYISO Agreement: Sections 15.01, 15.02, 15.03, 15.04, 15.05 and 15.06.

V. Reservation of Rights

The elimination of export charges to the New England Control Area does not in any way waive or diminish the rights of the New York Transmission Owners to make unilateral filings

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under Section 205 of the Federal Power Act to recover their reasonably incurred costs including those recovered through the charges on Exports and Wheels Through Transactions that will be eliminated pursuant to this filing.

LIPA's and NYPA's participation in this filing shall in no way be considered a waiver of their non-jurisdictional status pursuant to Section 201(f) of the Federal Power Act ("FPA") with respect to the Commission's exercise of the FPA's general ratemaking authority.

VI. Communications

The following persons should be included on the official service list in this proceeding, and all communications concerning these comments should be addressed to the following:

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VII. Effective Date and Request for Waiver

The tariff revisions included in this filing should become effective on the date the Commission permits ISO-NE or its successor to eliminate charges on exports and wheel-through

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transactions to New York. Consistent with the [June 22, 2004] [Compliance Filing] [Tariff] filing [made in Docket No. RT04-2-000], that date is currently projected to be [December 22, 2004].

The Joint Filing Parties request waiver of 18 C.F.R. § 35.3 (2003) so as to permit this filing to be made more than 120 days in advance of the effective date. The advance lead time will permit: (1) the Commission to review this filing in the context of the Compliance Filing in Docket No. RT04-2-000; (2) the change in New England to be implemented under the RTO New England tariff and (3) the New York Transmission Owners to work with the New York PSC to recover the revenues that would otherwise be lost as a result of the elimination of the export charges.

VIII. Service List

Copies of this filing are being served on each customer under the NYISO OATT and its Market Administration and Control Area Services Tariff (“Services Tariff”), on the New York State Public Service Commission and on the electric utility regulatory agencies in New Jersey and Pennsylvania.

IX. Federal Register Notice

A form of *Federal Register* Notice is provided as Attachment IV hereto. Also enclosed is a diskette with a copy of the notice in Word format.

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X. Conclusion

WHEREFORE, for the foregoing reasons, the Joint Filing Parties respectfully request that the Commission accept this tariff filing to become effective as proposed herein.

Respectfully submitted,

NEW YORK TRANSMISSION OWNERS

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

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Counsel

By: _____
Counsel

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cc: All Signatories to NYISO OATT and Services Tariff
Daniel L. Larcamp
Alice M. Fernandez
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Attachment I

Attachment II

Attachment III

Attachment IV

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. ER04-

NOTICE OF FILING

Take notice that on June __, 2004, the New York Independent System Operator, Inc. (“NYISO”) and the New York Transmission Owners filed a joint filing to eliminate export charges on exports to the New England Control Area.

The NYISO has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO’s Open Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designed on the official service list. This filing is available for review at the Commission or may be viewed on the Commission’s website at <http://www.ferc.gov>, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s website under the “e-filing” link. The Commission strongly encourages electronic filings.

Comment Date:

Magalie R. Salas, Esq.
Secretary