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July 1, 2009

**VIA ELECTRONIC FILING**

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

**Re: New York Independent System Operator, Inc., Docket No. ER09-405-001;  
Second Report on Restitution Discussions**

Dear Secretary Bose:

Transmitted electronically for filing in the referenced docket is the New York Independent System Operator, Inc.'s Second Report on Restitution Discussions.

If there are any questions concerning this filing, please call me at (202) 661-2212.

Very truly yours,

*/s/ Daniel R. Simon*

Daniel R. Simon  
Counsel for  
New York Independent System Operator,  
Inc.

Enclosure

cc: Michael A. Bardee, Gregory Berson, Connie Caldwell, Shelton M. Cannon, Larry Gasteiger, Bill Heinrich, Lance Hinrichs, Jeffrey Honeycutt, Kathleen E. Nieman, Rachel Spiker, John Yakobitis

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

**New York Independent System Operator, Inc. )**

**Docket No. ER09-405-001**

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.'S  
SECOND REPORT ON RESTITUTION DISCUSSIONS**

In accordance with the Commission's February 9, 2009 letter order in this proceeding, *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,100 at P 17 & Ordering Paragraph C (2009) (the "Order"), the New York Independent System Operator, Inc. (the "NYISO") submits the following second report providing information regarding its continued discussions with stakeholders about whether any course of restitution is feasible.

The NYISO filed its initial report on these stakeholder discussions on May 11, 2009 (the "May 11 Report"), in which it committed to make another report or before July 1, 2009, and requested the Commission to defer ruling on its tariff waiver request pending the filing of the report described in P 19 and Ordering Paragraph B of the Order.

**I. INTRODUCTION**

This proceeding involves the NYISO's December 11, 2008 request to FERC (the "Waiver Request"), supported by the affidavit of the NYISO's Independent Market Advisor, David B. Patton, Ph.D., for a limited waiver of tariff provisions necessitated by the modeling values incorrectly introduced into the NYISO's Security Constrained Unit Commitment ("SCUC") software for the Waldwick-Ramapo Phase Angle Regulator ("PAR") for the days of January 11, 2008 and January 14-24, 2008 (collectively, the "Waiver Period").

The Order issued by FERC in response to the Waiver Request instituted a three-part effort:

- pursuant to paragraph 17 of the Order, on March 11, 2009, the NYISO provided market participants with specified analysis and data,<sup>1</sup> and related information, together with a memorandum explaining the data and providing its initial views on the feasibility of restitution, and initiated the process of discussions with stakeholders as to whether any course of restitution is feasible; the NYISO filed, as required by the Commission, the May 11 Report to describe those discussions;
- pursuant to paragraph 18 of the Order, on March 11, 2009, the NYISO filed a report to the Commission regarding the timing and means by which the NYISO informed FERC and its market participants about the PAR issue; and
- pursuant to paragraph 19 of the Order, the NYISO has begun the development of procedures, and has initiated discussions with its market participants, regarding: (i) early notification of stakeholders and stakeholder committees of possible errors affecting its markets; (ii) timely follow-up and detailed explanations regarding errors; and (iii) greater transparency and heightened responsiveness to the stakeholders and appropriate committees; the NYISO will file with the Commission within 180 days of the Order (*i.e.*, by August 10, 2009) either proposed tariff changes, or a status report on the development of such procedures.

## **II. SECOND REPORT ON STAKEHOLDER DISCUSSIONS**

### **A. Summary of May 11 Report**

As described in the May 11 Report, following the NYISO's March 11 provision of data, the NYISO conducted discussions with stakeholders at five committee meetings:

- the March 25, 2009 meeting of the Management Committee;
- the April 1, 2009 meeting of the Market Issues Working Group (a working group of the Business Issues Committee);
- the April 14, 2009 meeting of the Business Issues Committee;
- the April 22, 2009 meeting of the Market Issues Working Group; and
- the April 23, 2009 meeting of the Management Committee.

Dr. David Patton, the NYISO's Independent Market Advisor, participated in the final two meetings by telephone.

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<sup>1</sup> The data included the simulations referred to in P 16 of the Order, with caveats about the use of such simulations.

The May 11 Report described discussions on the feasibility of restitution as having focused on several issues, including:

- the definition of feasibility – that is, in order to be just and reasonable, must restitution seek to reconstruct the direct and indirect market impacts of correct PAR inputs and, if so, how precise must that reconstruction be? Stated another way, could there be a “rough justice” remedy and, if so, how would it be calculated?;
- the feasibility of reconstructing direct and indirect market impacts with some reasonable level of accuracy, in light of the effect that the incorrect PAR inputs had on market participants’ conduct in the markets during the Waiver Period, and in light of the fact that the incorrect PAR inputs affected the physical operation of the system;
- whether the cost of restitution to NYISO as a whole would exceed verifiable out-of-pocket expenses arising from the error and, as a corollary, whether a reshuffling of settlement results could or should cover the asserted costs (*e.g.*, opportunity costs) of all simulated outcomes;
- the “ripple effect” of a rough justice resettlement on Transmission Congestion Contract proceeds, and on hedges and imports/exports executed in alleged reliance on the market results of the incorrect PAR inputs; and
- the policy implications of finding a rough justice restitution “feasible” in terms of market certainty and finality.<sup>2</sup>

The May 11 Report also stated that a significant number of stakeholders (including some who believe they were harmed by the results of the incorrect PAR inputs) expressed serious reservations about the feasibility and/or advisability of restitution, and other stakeholders expressed a desire to pursue additional analyses of a rough justice concept. In other words, no consensus had been reached among stakeholders on the feasibility of restitution.<sup>3</sup>

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<sup>2</sup> May 11 Report at 3.

<sup>3</sup> *Id.*

**B. Developments Since Filing of the May 11 Report; Proposal to Continue Discussions and Commitment to File Further Report**

In June 1, 2009 comments on the May 11 Report filed jointly by the New York Municipal Power Agency, the Municipal Electric Utilities Association of New York, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (collectively, the “Indicated LSEs”), the Indicated LSEs made the first specific stakeholder proposal received by the NYISO for a “rough justice” restitution (the “Proposal”).<sup>4</sup>

As the NYISO understands the Proposal, the NYISO would partially reimburse load-serving entities who paid, in total, the \$10.5 million in balancing congestion residuals (resulting from the incorrect PAR inputs) using the \$3.5 million in excess congestion rents received by transmission owners (also resulting from the incorrect PAR inputs).<sup>5</sup> Amounts beyond \$3.5 million would not be reimbursed to load-serving entities through assessment of an uplift charge on NYISO Market Participants.<sup>6</sup>

The NYISO and its independent market advisor (Dr. David Patton) have reviewed the Proposal, and believe it is appropriate to discuss the Proposal in the stakeholder process.<sup>7</sup> The

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<sup>4</sup> Comments of the New York Municipal Power Agency, the Municipal Electric Utilities Ass’n of New York, New York State Elec. & Gas Corp. and Rochester Gas and Elec. Corp. (collectively, the “Indicated LSEs”), Docket No. ER09-405-000 (June 1, 2009) (“Indicated LSEs’ Comments”).

<sup>5</sup> *Id.* at 4. The \$10.5 and \$3.5 million amounts represent the verifiable direct impacts of the incorrect PAR inputs, as set forth in the Waiver Request and the March 11, 2009 NYISO memorandum to Market Participants. Under the Proposal, the NYISO would presumably allocate the \$3.5 million in reimbursements using the same methodology used to allocate the pertinent balancing congestion residuals initially.

<sup>6</sup> *Id.*

<sup>7</sup> On June 12, 2009, certain of the New York transmission owners (“NYTOs”) filed in this proceeding a Motion For Leave to File a Response and Response to Comments of the Indicated LSEs (the “NYTO Response”). The NYTO Response takes issue with a number of the elements of the Indicated LSEs’ Comments. The NYTO Response also asserts (at 5-6) that NYISO has provided deficient and/or incomplete data. The NYISO disputes this assertion.

On June 29, 2009, the Indicated LSEs filed an Answer to the NYTO Response.

first opportunity to vet the Proposal through the same sequential working group/committee process utilized to date – that is, vetting by the (i) the Market Issues Working Group; (ii) the Business Issues Committee; and the (iii) Management Committee – occurs during the month of July. The scheduled dates for the meetings of those groups are July 8, 22 and 29, respectively.

In light of the foregoing, the NYISO intends to continue discussions with stakeholders, and commits to file with the Commission a further report, on or before August 10, 2009, on the results of these further discussions.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM  
OPERATOR, INC.

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July 1, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 1<sup>st</sup> day of July, 2009.

/s/ Pamela S. Higgins  
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