

144 FERC ¶ 61,120  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

New York Independent System  
Operator, Inc.

Docket No. ER13-1683-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued August 8, 2013)

1. On June 13, 2013, New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff). The proposed revisions incorporate changes to NYISO's governing agreements to allow it and its market participants to qualify for an exemption of specified market transactions from the provisions of the Commodities Exchange Act (CEA)<sup>1</sup> and Commodity Futures Trading Commission (CFTC) regulations. This order accepts NYISO's proposed revisions, effective September 15, 2013, as requested.

**I. Details of the Filing**

2. NYISO states that, on March 28, 2013, the CFTC issued an order<sup>2</sup> granting certain independent system operators (ISO) and regional transmission organizations (RTO)

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<sup>1</sup> 7 U.S.C. § 1 *et seq.* (2006), as amended by Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> See Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (April 2, 2013) (CFTC Final Order).

exemptive relief from CFTC regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>3</sup> NYISO explains that the CFTC Final Order contained certain conditions that the ISOs/RTOs must meet in order to be eligible for the exemption, including that: (1) their tariffs authorize the sharing of market data and information with the CFTC without notice to market participants; and (2) the transactions be entered into by: (i) “appropriate persons,” as defined in the CEA;<sup>4</sup> (ii) “eligible contract participants,” as defined in the CEA;<sup>5</sup> or (iii) persons who are in the business of either generating, transmitting, or distributing electric energy, or providing electric energy services that are necessary to support the reliable operation of the transmission system.<sup>6</sup>

3. To satisfy these conditions, NYISO proposes to amend section 12.4 of Attachment F of its OATT<sup>7</sup> to treat CFTC requests for confidential information the same as Commission requests for confidential information.<sup>8</sup> NYISO explains that this revision will allow it to respond to CFTC data requests without notifying market participants. In addition, NYISO proposes to add a new section 8.1.3 of the Services Tariff to require that each market participant transacting in the ISO-administered markets at all times be: (1) an “appropriate person,” as defined in the CEA; (2) an “eligible contract participant,” as defined in the CEA; or (3) a “person who actively participates in the generation, transmission, or distribution of electric energy,” as defined in the CFTC Final Order. Proposed section 8.1.3 requires that each customer demonstrate compliance with this new section by submitting to NYISO an officer certificate on or before September 15, 2013, and that each applicant seeking to become a customer demonstrate compliance by submitting to NYISO an officer certificate as part of its application materials. NYISO states that this proposed revision amounts to a minor tightening of its existing eligibility

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<sup>3</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> 7 U.S.C. § 6(c)(3) (2006).

<sup>5</sup> 7 U.S.C. § 1a(18) (2006). *See also* Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 77 Fed. Reg. 30,596 (May 23, 2012).

<sup>6</sup> CFTC Final Order at 19,897.

<sup>7</sup> NYISO OATT, Attachment F, § 12.4, Treatment of Confidential and Transmission System Information (1.0.0).

<sup>8</sup> NYISO Transmittal at 3 (citing *Ca. Indep. System Operator Corp.*, 142 FERC ¶ 61,069 (2013)).

and credit requirements that furthers the purposes of Order No. 741,<sup>9</sup> and it believes that most market participants already qualify as appropriate persons by having a net worth exceeding \$1 million or total assets exceeding \$5 million.<sup>10</sup>

4. NYISO requests that the Commission issue an order accepting its proposed revisions by August 12, 2013, to be effective September 15, 2013, so that market participants will have sufficient time to comply prior to the expiration of the NYISO's no-action relief from the CFTC on September 30, 2013.

## **II. Notice of Filing and Responsive Pleadings**

5. Notice of NYISO's filing was published in the *Federal Register*, 78 Fed. Reg. 38,707 (2013), with interventions and protests due on or before July 5, 2013. A motion to intervene was filed by the NRG Companies.<sup>11</sup> No protests or comments were filed.

## **III. Commission Determination**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motion to intervene of NRG Companies serves to make it a party to this proceeding.

7. We find NYISO's proposed tariff revisions to be just and reasonable and not unduly discriminatory. In Order No. 741, the Commission gave each ISO and RTO discretion to develop minimum criteria through their individual stakeholder processes.<sup>12</sup> Upon further consideration, the Commission finds that the minimum criteria for participation in the organized wholesale electric markets set forth in the CFTC Final Order are appropriate. The proposed tariff revisions are designed to address the

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<sup>9</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011); NYISO Transmittal at 4.

<sup>10</sup> See definition of "appropriate person," 7 U.S.C. § 6(c)(3)(F) (2006).

<sup>11</sup> The NRG Companies include the following: NRG Power Marketing LLC; GenOn Energy Management, LLC; Arthur Kill Power LLC; Astoria Gas Turbine Power LLC; Dunkirk Power LLC; Huntly Power LLC; NRG Bowline LLC; and Oswego Harbor Power LLC.

<sup>12</sup> Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132.

requirements of the CFTC Final Order and strengthen the minimum criteria for participation in the NYISO market. Therefore, the proposed tariff revisions are consistent with the requirements of Order No. 741. The proposed tariff revisions regarding information requests provide similar treatment to information requests by the CFTC and its staff as is already provided to the Commission and its staff.<sup>13</sup> Accordingly, we accept NYISO's proposed tariff revisions to become effective September 15, 2013, as requested.

The Commission orders:

NYISO's proposed tariff revisions are hereby accepted, effective September 15, 2013, as requested, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>13</sup> The Commission has previously accepted a similar filing in *California Independent System Operator Corporation*, 142 FERC ¶ 61,069 (2013).