

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

TDI USA Holdings Corp.,)	
)	
Complainant,)	
)	
v.)	Docket No. EL15-33-000
)	
New York Independent System Operator, Inc.,)	
)	
Respondent)	

**PRELIMINARY ANSWER OPPOSING FAST TRACK PROCESSING; AND MOTION
REQUESTING ADDITIONAL TIME TO ANSWER, A SHORTENED ANSWER PERIOD
TO MOTION, AND EXPEDITED ACTION OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits its Preliminary Answer to the *Complaint and Request for Fast Track Processing and Shortened Comment Period* (“Complaint”) filed by TDI USA Holdings Corporation (“TDI”) in this proceeding on December 16, 2014. This Preliminary Answer addresses only the Complaint’s request for fast track processing and its request that answers be filed by December 29. As discussed below, neither request is justified under Commission policy or the facts of this case.

The NYISO will submit an answer to the substantive elements of the Complaint by whatever deadline is established by the Commission. The NYISO also intends to comment on the proposed form of Protective Order included in the Complaint in the near future.

In addition, in accordance with Rules 212 and 2008,² the NYISO requests that given the importance and complexity of the issues in this proceeding, the similarity between them and the issues

¹ 18 C.F.R. § 385.213.

² 18 C.F.R. §§ 385.206 and 385.2008.

already pending in Docket No. EL15-26-000, and the impracticability of preparing and filing answers during the impending holidays, that the deadline for answering the Complaint be extended for a brief time beyond the standard thirty day period.³ Specifically, the deadline for submitting answers in this proceeding should be the same date that the Independent Power Producers of New York, Inc. (“IPPNY”), with support from the City of New York, has proposed for answers in Docket No. EL15-26-000, *i.e.*, January 23, 2015. No party has opposed that deadline.

Finally, the NYISO requests that the period for answering this filing be shortened to four days so that any responses to it would be due on December 22 and that the Commission act expeditiously to establish the deadline for answering the Complaint. TDI’s unjustified request that answers be submitted by December 29 has created considerable uncertainty. The Commission should eliminate that uncertainty, and allow parties to prepare complete responses that result in an adequate record, by setting a reasonable deadline after the holidays.

The NYISO is authorized to state that several entities that expect to participate in this proceeding - IPPNY, Entergy Nuclear Power Marketing, LLC, and TC Ravenswood, LLC, support the NYISO’s motion for an extension of time until January 23, 2015 for answers and other responses to TDI’s filing and for a shortened comment period on such motion.

³ Because TDI has included confidential material in the Complaint, in accordance with Rule 206(f), the deadline to respond is 30 days.

I. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory
Affairs
*Gloria Kavanah, Senior Attorney
New York Independent System Operator,
Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6103
Fax: (518) 356-7678
rfernandez@nyiso.com
rstalter@nyiso.com
gkavanah@nyiso.com

*Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue
Washington, D.C. 20037
Tel: (202) 955-1588
Fax: (202) 778-2201
tmurphy@hunton.com

*Noelle J. Coates⁴
Hunton & Williams LLP
1100 Brickell Ave.
Miami, FL 33131
Tel: (305) 536-2734
Fax: (305) 810-1635
ncoates@hunton.com

*Designated for receipt of service.

II. PRELIMINARY ANSWER OPPOSING FAST TRACK PROCESSING AND SHORTENED COMMENT PERIOD

The Complaint states that the NYISO evaluated its Champlain Hudson Power Express Project (“Project”) as part of Class Year⁵ 2012 pursuant to buyer-side capacity market power mitigation provisions (“BSM Rules”),⁶ established in the Services Tariff. The Complaint discloses that the NYISO determined that the Project would be subject to an Offer Floor under the BSM Rules.⁷ TDI asserts that this determination has “informed” its decision to drop out of Class Year 2012.⁸

⁴ The NYISO respectfully requests waiver of the Commission’s regulations (18 C.F.R. § 385.203(b)(3)(2014) to the extent necessary to permit service on counsel for the NYISO in both Miami and Washington, D.C..

⁵ Capitalized terms that are not otherwise defined in this Answer shall have the meaning specified in the Market Administration and Control Area Services Tariff (“Services Tariff”), and if not defined therein, then as defined in the NYISO’s Open Access Transmission Tariff.

⁶ The BSM Rules are set forth in Services Tariff Section 23.4.5.7, *et seq.*

⁷ For purposes of ensuring the record is accurate, the NYISO notes that pursuant to Section 23.4.5.7.3.3 of the Services Tariff, the exemption and Offer Floor determinations made following each round of the Class Year process are not final. Final determinations for Examined Facilities in a Class Year and those being examined concurrent with the Class Year, do not exist until after the completion of the Class Year, *i.e.*, after the

The Complaint requests that the Commission determine that the application of the BSM Rules to the Project, if included in Class Year 2015, would be unjust and unreasonable, and that the Commission should exempt the Project from the BSM Rules.⁹ TDI claims that fast track processing of the Complaint is warranted because the Commission's ruling will "inform TDI's decision whether to enter Class Year 2015."¹⁰ TDI also alleges that its efforts to develop the Project and to negotiate with potential customers will be complicated if the Commission does not fast track the Complaint. It therefore asks that the Commission require answers be filed by December 29, 2014 and that the Commission act by February 25, 2015.¹¹

The Complaint falls far short of making the showings required to justify fast track processing. Commission precedent is clear that fast track processing is not suited for complex issues¹² and is generally not appropriate for cases that do not involve comparatively straightforward tariff violations.¹³ To qualify for fast track processing, a complainant must make "a highly credible claim and persuasive showing that standard processes will not be capable of resolving the complaint promptly enough to provide meaningful relief."¹⁴ Fast track processing is to be employed only under very limited circumstances because of the "heavy burden" that expedited schedules place on all parties to the proceeding, as well as the potential for over-taxing the Commission's limited resources.¹⁵

final round of the Project Cost Allocations and the satisfaction of security requirements by all entities remaining in the Class Year.

⁸ Complaint at 2.

⁹ Complaint at 1.

¹⁰ Complaint at 3.

¹¹ Complaint at 3, 21.

¹² See e.g. *Amoco Energy Trading Corp. v. El Paso Natural Gas*, 89 FERC ¶ 61,165 (1999).

¹³ See, e.g. *Amoco Energy Trading* (denying fast track processing in part because there was no allegation that the utility had deviated from its Commission-approved tariff).

¹⁴ See *Fast Track Procedures* (updated June 28, 2010) available at <<http://www.ferc.gov/legal/complaints/form-comp/fast-track.asp#skipnav>>.

¹⁵ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999).

The Complaint implicates complex and important issues that potentially impact many market participants and current and prospective developers, and are clearly ill-suited to fast tracking. The Commission is aware of the difficult questions, and the potentially significant economic consequences, associated with proceedings involving the BSM Rules, and analogous provisions in other markets. The Complaint itself invokes Commission precedents emphasizing the importance of striking an appropriate balance between under- and over-mitigation.¹⁶ TDI is not claiming that the NYISO has violated existing, Commission-accepted BSM Rules. Rather it is asking that the established rules effectively be modified in order to exempt the Project. TDI would have the Commission make a complex determination that could alter the balance between under- and over-mitigation in New York and, moreover, do so without allowing adequate time for interested parties to respond and develop a complete record. This is unreasonable and inconsistent with precedent.

TDI has also failed to carry its burden of demonstrating that the Commission's standard processes cannot resolve the Complaint promptly enough to provide it with meaningful relief should it be determined to be warranted.¹⁷ TDI speculates that it will face some impediments in deciding whether to enter Class Year 2015 and in negotiating with potential customers unless the Commission acts expeditiously. It also asserts that its concerns are not mooted by the fact that it has dropped out of Class Year 2012. Neither the fact that its concerns may now be technically ripe, nor the possibility that its business plans might be complicated, constitutes the required demonstration that the Commission's standard processes are inadequate. Similarly, TDI has not explained why it is imperative that the Commission issue an order before TDI decides whether to enter Class Year 2015, or why it should have information that other developers will not.

This is especially true given the unreasonable hardships that TDI's request would place on other participants in this proceeding. TDI notes that the Project has been in development since 2008.

¹⁶ See Complaint at 13-14.

¹⁷ Rule 206(b)(11).

It acknowledges the Commission's determination that same year that controllable transmission lines are subject to the BSM Rules and does not even object to that ruling as a matter of general principle.¹⁸ The potential difficulty that other parties would face in meeting a proposed answer deadline in a case involving complex issues in the middle of the holiday season should also have been readily foreseeable. Yet the Complaint is devoid of any real explanation of why TDI waited to bring its concerns to the Commission. Even if TDI had a valid need for action before March 1, it should not be permitted to impose hardships on others because of its own delay.

To be clear, the NYISO would have no objection if the Commission decided to act expeditiously on the Complaint after allowing a reasonable time for the NYISO and others to prepare their answers. But TDI has not shown that fast track processing is warranted and its request that answers to its Complaint be due on December 29 must be rejected.

III. MOTION TO EXTEND DEADLINE FOR ANSWERS, COMMENTS, AND INTERVENTIONS

Because the Complaint includes confidential material, the deadline for responses to it would ordinarily be set thirty days after the Complaint was filed, *i.e.*, on January 15, 2015, in accordance with Rule 206(f). The NYISO respectfully requests that this deadline be extended until January 23, 2015. This brief extension is justified given the impending holidays. In addition, as noted above, January 23 is the same deadline that IPPNY and the City of New York have sought for responding to the pending complaint in Docket No. EL15-26-000.¹⁹ No party has objected to that request. That complaint was filed by a group of New York Transmission Owners ("NYTO Complaint") and asks that the NYISO be directed to establish a "competitive entry exemption" from the BSM Rules. The exemption proposed in the NYTO Complaint would potentially be available to any entrant that was a member of a Class

¹⁸ See Complaint at n. 42.

¹⁹ *Complaint of the Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, and Central Hudson Gas and Electric Corporation*, Docket No. EL15-26-000 (December 4, 2014).

Year after Class Year 2012. Thus, should the Project enter Class Year 2015 or a later Class Year, the relief requested in the NYTO Complaint is similar to what the TDI Complaint seeks to fashion for the Project alone. Further, the two proceedings raise very similar questions regarding proposed changes to the BSM Rules, the complex balance between under- and over-mitigation, and the potential economic consequences of altering that balance. TDI's Complaint introduces the additional question of whether it is appropriate to provide an exemption to the Project alone. Since many of the same parties are anticipated to be active participants in both this proceeding and in Docket No. EL15-26-000, it would be reasonable to permit them to submit their filings in both dockets at the same time. Considering TDI's Complaint and the NYTO Complaint concurrently, at least in the initial stages, would presumably also be a more efficient use of the Commission's resources.

IV. MOTION TO SHORTEN THE PERIOD FOR RESPONSES TO THIS PRELIMINARY ANSWER AND REQUEST FOR EXPEDITED ACTION

Given the uncertainty and potential disruptions caused by TDI's decision to propose an answer deadline that falls during the heart of the holiday season the NYISO respectfully asks that the Commission shorten the period for responses to this Preliminary Answer and act expeditiously to establish a more reasonable deadline. Rule 213 normally allows fifteen days for answers to motions, and five days for answers to motions requesting extensions of time. Given the timing of the Complaint the NYISO submits that allowing four days for responses to this filing, *i.e.*, until December 22, is reasonable and would permit the Commission to take expedited action before Christmas Eve.

V. CONCLUSION

For the reasons set forth above, the NYISO respectfully requests that the Commission (i) decline to grant fast track processing; (ii) extend the period for submitting answers to the Complaint until January 23, 2015; and (iii) shorten the period for responding to this filing to four days, *i.e.*, until December 22, 2014.

Respectfully submitted,

/s/ Ted Murphy

Counsel for
the New York Independent System Operator, Inc.

December 18, 2014

cc: Michael Bardee
Gregory Berson
Anna Cochrane
Jignasa Gadani
Morris Margolis
Michael McLaughlin
David Morenoff
Daniel Nowak
Jamie Simler

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 18th day of December 2014.

/s/ Catherine A. Karimi
Sr. Professional Assistant
Hunton & Williams LLP
2200 Pennsylvania Ave., NW
Washington, DC 20037