UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Flint Mine Solar LLC v. New York	**)**	
Independent System Operator, Inc.	**)**	**Docket No. EL22-3-000**

MOTION FOR EXTENSION OF TIME TO ANSWER COMPLAINT, FOR WAIVER OF STANDARD ANSWER PERIOD, AND FOR EXPEDITED ACTION OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rules 212 and 2008 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.2008 (2021), the New York Independent System Operator, Inc. ("NYISO"), respectfully requests a brief extension of time to answer the *Complaint for Refund of Milestone Deposit* ("Complaint") in this proceeding. The Complaint was filed by Flint Mine Solar LLC ("FMS") on October 14 under the Commission's simplified Rule 218 procedures which are intended for "small controversies." The Commission subsequently issued a Notice, officially dated October 18, establishing an October 25 deadline for answers and interventions. It appears that this date was set based on Rule 218(e) which establishes a ten-day answer period.

The NYISO respectfully requests that the Commission extend that deadline and allow the NYISO and other interested parties until November 3, 2021 to respond to the Complaint. In effect, the NYISO is asking the Commission to restore the standard Rule 213 twenty-day answer period in this proceeding. As discussed below, the Complaint raises complex substantive questions regarding the interpretation of the NYISO's Open Access Transmission Tariff ("OATT") and Commission precedents that the NYISO cannot reasonably address in the next five days. In addition, the Complaint does not meet the express requirements of Rule 218.

The NYISO also respectfully asks that the Commission waive the standard five-day period for answers to motions for extensions of time. The NYISO asks further that the Commission act expeditiously and issue an order granting the NYISO's requested extension by Friday, October 22. These requests are justified given the circumstances of this proceeding and the imminence of the current October 25 deadline.

Counsel for FMS has authorized the NYISO to state that FMS does not oppose the requested extension.

I. MOTION FOR EXTENSION OF TIME

The NYISO has no objection if the Commission decides to issue an order in this proceeding faster than its standard timetable for acting on complaints. But there are three reasons why the Commission should adopt the standard twenty-day answer period for responses to the Complaint instead of the currently effective October 25 deadline.

First, the dispute in this proceeding is complex and it is not reasonable or consistent with due process for the Commission to impose an abbreviated answer period here. When the Commission adopted Rule 218 it was clear that Rule 218 was not meant for a "complex complaint."[1] Instead, the Commission envisioned a "short form" complaint process for small and simple disputes. Precedent regarding the "fast-track" complaint rules that were introduced at the same time as the introduction of Rule 218[2] holds that expedited filing deadlines are not suited for complex issues. The Commission understood that respondents should not be burdened

[1] *See Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 (1999) ("In the Commission's view, the $100,000 ceiling and the requirement of a de minimis impact on other customers should alleviate parties' concerns that a complex complaint could be filed under this procedure.")

[2] The NYISO is not aware of any similar precedent interpreting Rule 218 specifically.

with abbreviated answer periods without good cause.[3] The same principles should apply under Rule 218.

The Complaint in this case raises complex legal issues that the NYISO should be afforded a reasonable time to address. FMS argues that the NYISO has misinterpreted its tariff; the NYISO will argue that it has not. FMS claims that precedent from other regions supports its tariff interpretation; the NYISO will argue that it does not. These are not simple questions that can be addressed in a "short form" answer.

Second, the NYISO disagrees with FMS that the Complaint satisfies the express requirements of Rule 218. FMS asserts that its requested relief "will not directly impact any other entity" and thus meets the Rule 218 requirement that a controversy must not have a more than *de minimis* impact on other entities. However, the option of submitting a deposit in lieu of the regulatory milestone under Section 25.6.2.3.1 of the OATT is available to any Developer seeking to include its proposed Large Facility in an upcoming Class Year Study that does not otherwise satisfy a regulatory milestone for its project identified in the OATT. FMS does not allege that the NYISO is treating it in a discriminatory or unduly preferential way in comparison to other Developers of Large Facilities that provided deposits in lieu of the regulatory milestone. Consequently, Commission action in this proceeding will have precedential effects and there are other Developers that may be impacted by the Commission's determination. The NYISO believes that this would constitute a greater than *de minimis* impact on those entities.

Third, the NYISO disagrees that the Complaint satisfies the express requirement of Rule 218 that a complaint must involve "an amount in controversy of less than $100,000." The actual dispute between FMS and the NYISO involves a $100,000 deposit, *i.e.*, the dispute is not for

[3] *See, e.g., Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999).

"less than" $100,000. FMS acknowledges that it voluntarily reduced its requested relief by one dollar in attempt to satisfy Rule 218's requirement. However, if the Commission were to decide that the NYISO should have returned the deposit after the completion of all interconnection studies under the Large Facility Interconnection Procedures, the NYISO would likely still be required to return the remaining dollar based on the Commission's interpretation of the NYISO's OATT in this proceeding.

In short, the Complaint raises complex issues that push the boundaries of the kind of controversy that Rule 218 was intended to govern. In these circumstances, it is appropriate that the NYISO be afforded the standard twenty-day answer period to reply to the Complaint.

II. Request for Wavier of Answer Period and for Expedited Action

The NYISO understands that the Commission's standard practice is to allow five days for answers to motions for extension of time. In this instance, however, the Commission should waive the normal rule and act expeditiously to grant the requested extension by Friday, October 22.

The NYISO is seeking relief here as promptly as it could after the Commission's issuance of a Notice establishing an October 25 filing deadline. If the Commission follows the five-day answer rule here, the Commission could not act on the requested extension before the filing deadline arrives. In that case, the NYISO could be compelled for all practical purposes to file an answer on October 25, 2021 without having had a reasonable time to prepare it given the complexity of the issues in this proceeding. That would be an unreasonable outcome and could deprive the Commission of a complete record to review.

By contrast, acting expeditiously to adopt the standard answer period will not prejudice any party and should not significantly delay a resolution in this proceeding.

Respectfully Submitted,

/s/ *Brian R. Hodgdon*

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October 20, 2021

cc

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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 in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 20th day of October 2021.

/s/ Joy A. Zimberlin

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