

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

**New York Independent System Operator, Inc. )      Docket No. EL11-42-000**

**PRELIMINARY ANSWER OF THE NEW YORK INDEPENDENT SYSTEM  
OPERATOR, INC. TO AMENDMENT TO COMPLAINT**

Pursuant to Rule 213 and 215 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this Preliminary Answer to the *Amendment to Complaint and Request for Shortened Comment Period* (“Amendment”) that was submitted in this proceeding on June 15, 2011. This pleading addresses only the Complainants’ request for a shortened answer and comment period. This answer suggests that the Commission, for reasons of administrative efficiency, set a single June 30, 2011 deadline for responses to both the June 3, 2011 *Complaint Requesting Fast-Track Processing* (“Complaint”) and the Amendment. As described below, in a conversation between NYISO counsel Gloria Kavanah, and counsel for the Complainants, David Tewksbury, Mr. Tewksbury agreed that it would be more efficient to have a single date for comments. On behalf of the Complainants, Mr. Tewksbury supports the Commission’s establishment of the single date of June 30, 2011 for comments on both the Complaint and the Amendment. Counsel for Consolidated Edison Company of New York, Inc. (“Consolidated Edison”), Neil Butterklee, authorized the NYISO to state that Consolidated Edison has no objection to the single date of June 30, 2011. Alternatively, should the Commission be inclined to not establish the single date of June 30, 2011, this Answer explains why a shortened response period should not be imposed on the NYISO and other parties.

---

<sup>1</sup> 18 C.F.R. § 385.213 (2011).

The NYISO will submit a substantive answer to the other elements of the Amendment by whatever deadline is established by the Commission.

## **I. PRELIMINARY ANSWER**

### **A. Imposing a June 23 Deadline for Answering the Amendment Would Be Unnecessary and Unreasonable**

Under Rule 215(b), the NYISO and other parties to this proceeding are entitled to answer the Amendment as a matter of right. Rule 206 and 213 establish that the standard twenty day answer period applies to amendments to complaints. As the Commission recently explained, “a complainant may subsequently amend or supplement its complaint, but this would entitle the respondent to submit an additional answer, 18 C.F.R. § 385.206(f).”<sup>2</sup> The Commission’s normal practice appears to be to follow those rules and to allow at least twenty days for answers to amendments to complaints.<sup>3</sup>

Complainants requested a one week answer and comment period arguing that “imminent” harm may result if the Commission does not act expeditiously.<sup>4</sup> There is no need for expedited action. The Complaint argued that fast track processing was urgently needed because the NYISO’s stakeholder Operating Committee was meeting on the Class Year<sup>5</sup> 2009 and 2010 cost allocations, which are tied to the issuance of mitigation exemption determinations,<sup>6</sup> at its

---

<sup>2</sup> *New England Conference of Public Utilities Commissioners v. Bangor Hydro-Electric Co.*, 135 ¶ 61,140, at n. 35 (2011).

<sup>3</sup> For example, in the last few years, the Commission allowed 21 days and 31 days for answers and comments to amended complaints that were submitted in Docket Nos. EL09-47 and EL10-77, respectively. *See Notice of Extension of Time*, Docket No. EL09-47 (May 8, 2009); *Notice of Amended Petition for Declaratory Order and Complaint*, Docket No. EL10-77 (Nov. 8, 2010).

<sup>4</sup> Amendment at 10.

<sup>5</sup> Capitalized terms that are not defined herein shall have the meaning specified in Attachment H to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) or Attachment S to the NYISO’s Open Access Transmission Tariff (“OATT”).

<sup>6</sup> *See* section 23.4.5.7.3.3 of Attachment H to the Services Tariff.

June 10 meeting. However, as Complainants now acknowledge, the Operating Committee decided, without any mention or discussion of the Complaint or capacity market mitigation issues, to defer action on both Class Year Facility Studies until its next meeting. That meeting is currently scheduled for July 14.

Complainants suggest that key mitigation-related determinations might be finalized at the July 14 meeting, or even sooner. They claim that “[w]hile actions on the cost allocation studies was tabled at the June 10, 2011 meeting, tabled motions are automatically slated for discussion and action at the next Operating Committee meeting” and note that it is possible for “special meetings” to be called on five business days notice in “certain circumstances.”<sup>7</sup> However, no actual request has been made and the NYISO does not anticipate pursuing a special meeting prior to July 14.<sup>8</sup> Second, the Operating Committee By-Laws establish a formal and considerably more detailed process than the mere issuance of a 5-day notice as Complainants imply in the Amendment.<sup>9</sup> Importantly, the Operating Committee Chair is required to “consider whether there are urgent circumstances that warrant consideration of an item at a special meeting, whether the item was considered at a prior meeting of a lower committee . . . , the amount of time between receipt of a request for a special meeting and the next regular meeting of the Operating Committee, . . . and the burdens imposed on members of the Operating Committee

---

<sup>7</sup> Amendment at 3, n. 6.

<sup>8</sup> The discussion of a delay of the Operating Committee’s action on the Class Year Facilities Study, and regarding the motion to table arose and was based on a request by a generator to have additional time for its consultant to complete its analysis of the study and the application of the System Deliverability Upgrade (“SDU”) proposed in the study. The generator’s representative explained that it thought it would receive the consultant’s input prior to the July 14 Operating Committee meeting but it could not be certain. The generator’s representative also explained that its management would need to examine the information provided by the consultant.

<sup>9</sup> See Operating Committee By-Laws, Sections 4.05 – 4.09, available at <[http://www.nyiso.com/public/webdocs/committees/general\\_information/nyiso\\_oc\\_bylaws.pdf](http://www.nyiso.com/public/webdocs/committees/general_information/nyiso_oc_bylaws.pdf)>

by calling a special meeting.”<sup>10</sup> There is thus not a meaningful possibility that the NYISO would issue final mitigation exemption or Offer Floor determinations under its current tariff provisions before August 13, 2011.

Specifically, pursuant to section 25.10.2 of Attachment S to the NYISO’s OATT, which sets forth the provisions applicable to Class Years 2009 and 2010, the following procedures would apply. If the Operating Committee approves both study reports, Class Year 2009 and 2010 developers would have thirty calendar days from the date of approval to indicate acceptance or non-acceptance of their System Upgrade Facility (“SUF”) and/or SDU cost allocations. A Developer’s non-acceptance of its SUF cost allocation would result in the removal of its project from the Class Year. Non-Acceptance of an SDU cost allocation would result in removal from the Class Year Deliverability Study. If any Class Year 2009 Developer were to reject its cost allocation for either SUFs or SDUs, the NYISO would have four weeks to prepare and issue revised SUF and/or SDU reports and cost allocations, as applicable, for both Class Year 2009 and 2010. If all Class Year 2009 Developers accept their SUF and SDU cost allocations, but any Class Year 2010 Developer rejects its cost allocation for SUFs or SDUs, the NYISO would have two weeks to prepare and issue revised SUF and/or SDU reports and cost allocations, as applicable, for Class Year 2010.

Moreover, the NYISO’s determinations could only become final as early as August 13 if all twelve projects in the 2009 and 2010 Class Years were to accept SDU and SUF cost allocations approved by the Operating Committee on July 14. Years of experience with the Attachment S process indicates that such an outcome is very unlikely. In addition, it is possible that the Operating Committee might not approve the Class Year Facility Studies at the July 14

---

<sup>10</sup> Operating Committee By-Laws at 4.05.

meeting. In that event, the mitigation determinations are not likely to be final before mid-September.<sup>11</sup> There is thus no need for the Commission to limit the time that the NYISO and other interested parties will have to answer the Amendment.

In addition to being unnecessary, the request for a shortened response period is unreasonable. As an initial matter, the Amendment again addresses complex issues and seeks to impose tariff changes on the NYISO and its other stakeholders. The NYISO's preliminary answer to the Complaint explained that Commission precedent does not support the use of fast track processing in such circumstances.<sup>12</sup> Complainants have not addressed these considerations in either the Complaint or the Amendment but the considerations and Commission precedent apply with equal force here. Nor have Complainants cited any precedent that would justify burdening the NYISO and other parties with a shortened response period.

The Amendment makes new arguments addressing complex rules that are very important to the functioning of the New York City capacity market and to the interests of many NYISO stakeholders. As Complainants note, their new arguments are relevant to three of the five principal issues that they identified in their Complaint.<sup>13</sup> The NYISO and other parties must have a reasonable time to address these arguments and issues in the interest of fairness, due process, and establishing a fully-developed record for the Commission's review. Accordingly, the Commission should not impose a shortened period for responding to the Amendment.

---

<sup>11</sup> Thirty days from the August Operating Committee meeting.

<sup>12</sup> See *Preliminary Answer of the New York Independent System Operator, Inc.*, Docket No. EL11-42 at 2-3 (June 6, 2011).

<sup>13</sup> See Amendment at 9-10.

**B. The Commission Should Establish a Single June 30, 2011 Deadline for Responding to Both the Complaint and the Amendment**

The usual procedure would be for the Commission to establish a July 5 deadline for responses to the Amended Complaint, *i.e.*, twenty days from the date that the Amended Complaint was filed. Responses to the Complaint would continue to be due on June 23. The NYISO respectfully submits that an alternative approach could be more efficient.

Given that the Original Complaint and the Amendment address common issues it would be simpler for the NYISO, and presumably less burdensome for the Commission and for other parties, if both pleadings were addressed in a single answer. Granting an additional week for parties to answer the Complaint and establishing the same date to answer the Amendment would be sufficient in the NYISO's view. Given that final mitigation determinations cannot practicably be made before mid-August, and given the likelihood that they will not actually be made until later, providing a brief one week extension for responses to the Complaint would not harm any party. Further, parties filing an answer or comments to both the Complaint and Amendment together would improve the record for the Commission.

The NYISO's suggestion is consistent with precedent. The Commission has previously established a single extended response deadline when a complaint addressing complex issues was amended before the deadline for answers and comments had expired.<sup>14</sup> Setting a single new

---

<sup>14</sup> See, e.g., *Notice of Filing of Amended Complaint and Extension of Time*, Docket No. EL00-70-000 (May 12, 2000) ("Upon consideration and because of the complex issues raised in the original Complaint and issues associated with the Amended Complaint, additional time is being provided for the filing of answers to the Complaint and the Amended Complaint to and including May 25, 2000. Interventions, protests, and answers shall address all of the matters in both Complaint filings.")

deadline is also consistent with the Commission's rules governing amendments to tariff filings which are a reasonable model for this proceeding.<sup>15</sup>

In-house counsel to the NYISO, Gloria Kavanah, spoke with David Tewksbury, counsel to the Complainants. Mr. Tewksbury concurs that a single date would be more efficient. He also authorized the NYISO to state that his clients concur with the June 30 date for both comments on the Complaint and the Amendment. Consolidated Edison, which previously filed in opposition to a shortened comment period in this proceeding, does not object to the establishment of June 30 as the date for comments on both the Complaint and the Amendment.

## **II. CONCLUSION**

For the reasons set forth above the NYISO respectfully requests that the Commission establish a single June 30, 2011 deadline for filing answers and comments to both the Complaint and the Amendment. If the Commission is not inclined to grant the June 30 date for comments on both the Complaint and the Amendment, the NYISO alternatively respectfully requests that the Commission decline to impose a shortened response period on the NYISO and other parties.

Respectfully Submitted,

/s/Ted J. Murphy

Ted J. Murphy

Counsel to the

New York Independent System Operator, Inc.

June 16, 2011

---

<sup>15</sup> 18 C.F.R. § 35.17(b) (2011) (explaining that the submission of an amendment to a pending tariff filing "will toll the notice period in section 205(d) of the Federal Power Act for the original filing, and establish a new date on which the entire filing will become effective.")

**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 and in Docket No. ER10-3043.

Dated at Washington, DC, this 16th day of June, 2011.

*/s/Ted J. Murphy* \_\_\_\_\_

Hunton & Williams LLP  
1900 K Street, NW  
Washington, DC 20426  
(202) 955-1500