UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Energy Spectrum, Inc. and Riverbay Corporation	)	
	)	
v.	)	**Docket No. EL12-56-000**
	)	
New York Independent System Operator, Inc.	)	

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 213 of the Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO"), respectfully requests leave to answer and answers the April 20, 2012 *Motion for Leave to Answer and Answer of Energy Spectrum, Inc. and Riverbay Corporation* (the "*Riverbay Answer*"). The NYISO understands the Commission's preference that parties avoid responding to answers when possible. It is making this filing solely to correct major misstatements in the *Riverbay Answer*. The fact that the NYISO has confined itself to addressing the most significant factual and tariff interpretation errors should not be construed as agreement with, or acceptance of, any of the *Riverbay Answer's* other assertions. Nothing in the *Riverbay Answer* alters the fact that the underlying Complaint[2] in this proceeding is without merit and should be dismissed in its entirety.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to accept responses to answers when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of

[1] 18 C.F.R. § 385.213 (2011).

[2] *Complaint of Energy Spectrum, Inc. and Riverbay Corporation and Request for Fast-Track Processing and Summary Disposition,* April 12, 2012 ("Complaint").

the record in a proceeding.[3] The *Riverbay Answer* makes major misstatements and proposes a fundamentally erroneous interpretation of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). It confuses the issues in this proceeding and must be corrected so that the Commission will have an accurate record. This answer focuses exclusively on correcting the most significant errors and the Commission should therefore exercise its discretion to accept it.

II. ANSWER

The *Riverbay Answer* begins by wrongly asserting that the "impact of TB 217 is to prohibit Special Case Resource ('SCR') behind the meter generation from participating in the NYISO's Installed Capacity ('ICAP') market . . . ." which it supposedly does by "changing definitions" set forth in, and by altering the "meaning" of section 5.12.11.1, of the Services Tariff.[4] The truth is that Technical Bulletin 217 does no such thing. Technical Bulletin 217 does not prevent behind the meter generation from participating in the SCR program provided that it can satisfy the Services Tariff's core, reliability-based, eligibility requirement. Specifically, behind the meter generation must be able to reduce demand at the direction of the NYISO in order to enroll as a SCR. If it cannot satisfy this requirement it may not, and should not be permitted to, provide Installed Capacity. Contrary to the impression that the *Riverbay Answer*

[3] *See e.g., New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record . . . .").

[4] *Riverbay Answer* at 2. The Riverbay Answer also repeats the Complaint's claims that Technical Bulletin 217 made "substantial changes" to the tariff in contravention of NYISO governance requirements and the Federal Power Act. The NYISO has already explained that Technical Bulletin 217 simply restated and clarified existing Services Tariff requirements and did not change any rules. *See Answer and Request for Expedited Action of the New York Independent System Operator, Inc.*, April 19, 2012 at 6-10. The NYISO is therefore not addressing these allegations further here.

seeks to create, there is behind the meter generation in New York that meets this requirement and that will continue to be eligible to participate in the SCR program.

In fact, it is the *Riverbay Answer,* and not Technical Bulletin 217, that attempts to rewrite the Services Tariff in this proceeding. The *Riverbay Answer* would create an alternative set of SCR program eligibility criteria for behind the meter generation with no basis in the text of the Services Tariff or the purpose of the program. It effectively asks the Commission to read the Services Tariff to allow Installed Capacity Suppliers[5] to be paid for reducing demand even if they have no ability to actually provide demand reductions when needed.

Complainants deny that the Services Tariff's definition of "Capacity" requires SCRs to have the ability to "control demand at the direction of the ISO" by noting that the definition also encompasses resources that "generate or transmit electrical power."[6] Complainants fail to acknowledge, however, that behind the meter generation enrolled as a SCR does not provide capacity as a "Generator" under the Services Tariff. Like any other SCR, behind the meter generation is eligible to receive capacity payments based on its ability to reduce demand, not its ability to "generate electrical power" for the grid. The tariff recognizes this distinction by identifying "Responsible Interface Parties" ("RIPs") and "Generators" as separate classes of "Installed Capacity Supplier" and in numerous other ways.[7]

Further, it is important to note that merely meeting the definition of "Capacity" does not confer automatic eligibility for compensation in the NYISO's Installed Capacity markets. Section 5 of the Services Tariff contains the requirements for any facility meeting the definition

[5] Capitalized terms that are not otherwise defined herein shall have the meaning specified in Section 2 of the Services Tariff.

[6] *See Riverbay Answer* at 11.

[7] *See, e.g.*, Section 2.0 of the Services Tariff (establishing the definition of "Installed Capacity Supplier."); Section 5.12 (differentiating between RIPs and Generators with respect to various Installed Capacity Supplier requirements).

of "Capacity" to sell its Capacity. For Generators choosing to connect to the electric transmission grid to sell Capacity and Energy at wholesale, Section 5.12.1 *et seq*. establishes testing, Day-Ahead Bidding and outage reporting requirements, among others. Similarly, section 5.12.11.1 requires behind the meter generators, choosing not to sell Energy at wholesale but desiring to sell their Capacity in the SCR program, to have the ability "to control demand at the direction of the ISO." The distinction between participating in the Installed Capacity market as a SCR and a Generator is also clearly referenced in the letter from Mr. Allen that is included in Exhibit 1 to the *Riverbay Answer*.

Complainants also quote selectively from section 5.12.11.1 to make it seem as though a SCR need not comply with subsection (i), which requires that it is "available to operate … at the direction of the ISO," if it has reported behind the meter generation that was operating as a Load modifier coincident with the peak.[8] Complainants' reading of 5.12.11.1 is wrong. A SCR cannot ignore the requirements of subsection (i), which unambiguously applies to all potential SCRs, simply because it has reported behind the meter generation in accordance with subsection (ii). Both requirements apply to a SCR that seeks to participate with behind the meter generation.

The *Riverbay Answer* advances the remarkable claim that the fact that behind the meter generation that could not reduce demand at the NYISO's direction was apparently enrolled in the SCR program in the past means that such enrollments must be permissible. Resources that cannot reduce their demand may not participate as SCRs under the Services Tariff. Commission precedent is clear that "informal communications between the parties, such as phone calls and

[8] *See Riverbay Answer* at 2.

e-mails, do not take precedence over the language of the filed tariffs."[9] Accordingly, the communications included in the *Riverbay Answer* do not represent an affirmative NYISO endorsement of their participation and are not relevant. They provide no support for Complainants' attempt to revise the Services Tariff's prohibition on the enrollment in the SCR program of resources that cannot reduce their demand.

Finally, the *Riverbay Answer* claims that the NYISO timed the issuance of Technical Bulletin 217 to coincide with religious holidays in order to "[ensure] that interested stakeholders would not be able to obtain relief from the Commission . . . ." in advance of the registration deadline for the May ICAP Spot Auctions.[10] The NYISO takes exception to this false insinuation. The NYISO issued Technical Bulletin 217 on Friday, April 6, 2012, a day that it, and many other institutions (including the federal government) was open for business, after reviewing the comments it received from stakeholders. The NYISO issued Technical Bulletin 217 on that date to provide RIPs with certainty regarding the SCR enrollment rules at the earliest possible time during the May enrollment period.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. ("NYISO"), respectfully requests that the Commission accept this answer and renews its request that the Commission dismiss the Complaint in its entirety.

Respectfully submitted,

/s/ Ted J. Murphy
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April 24, 2012

[9] *See New York Independent System Operator v. Astoria Energy LLC*, 118 FERC ¶ 61,216 at P 36, *citing Arco Oil and Gas Co.*, 22 FERC ¶ 61,293 at 61,515 (1983).

[10] *Riverbay Answer* at 3.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list complied 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 (2011).

Dated at Washington, DC this 24th day of April, 2012.

By: */s/ Ted J. Murphy*

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