UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Astoria Generating Company, L.P.; NRG Power Marketing LLC; Arthur Kill Power, LLC; Astoria Gas Turbine Power LLC; Dunkirk Power LLC; Huntley Power LLC; Oswego Harbor Power LLC; and TC Ravenswood, LLC	)	**Docket No. EL11-42-001**
v.	)	
New York Independent System Operator, Inc.	)	

ANSWER TO REQUESTS FOR CLARIFICATION OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rules 212, and 213,[1] the New York Independent System Operator, Inc. ("NYISO") submits this answer to the requests for clarification submitted by the Complainants[2] and by Exelon Corporation in this proceeding.[3] In deference to the Commission's procedural rules, the NYISO is not responding to the requests for rehearing of the June 22 Order[4] that are included in these filings. The NYISO's silence in response to Complainants' and Exelon's arguments on rehearing should not be construed as acquiescence to or agreement with them.

[1] 18 C.F.R. §§ 385.212, 213 (2011).

[2] Complainants are the Astoria Generating Company, L.P., TC Ravenswood, LLC, and the NRG Companies.

[3] Under Rule 213, the NYISO is entitled to answer requests for clarification as a matter of right. To the extent that the Commission deems all or a portion of this answer to be a response to a request for rehearing the NYISO respectfully requests that the Commission exercise its discretion to accept it. The Commission has discretion to accept answers to requests for rehearing and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful in the Commission's decision-making process. *See, e.g., Transcontinental Gas Pipe Line Corp.,* 113 FERC ¶ 61,129 at P 11 (2005) (accepting a response where an applicant "filed its pleading as a request for clarification, to which answers lie, and only asked that it be considered a request for rehearing in the alternative"); *New England, Inc.,* 120 FERC ¶ 61,122 at P 46 (2007*)* (stating that "unlike answers to requests for rehearing, answers to requests for clarification are not prohibited under the Commission's Rules of Practice and Procedure").

[4] *Astoria Generating Co., L.P. v. New York Indep. Sys. Operator, Inc.,* 139 FERC ¶ 61,244 (2012).

I. Complainants' Requested Clarification Regarding the Application of the "Mitigation Duration" Rule to Entrants that Lose their Exemption Should Be Denied

The NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") establishes that mitigated entrants (other than Special Case Resources) shall cease to be subject to the Offer Floor[5] requirement to the extent that the ICAP Supplier's UCAP "has cleared for any twelve, not-necessarily consecutive, months . . . ."[6] This "mitigation duration" rule was formulated by the Commission in its November 2010 Order in Docket No. ER10-3043-000.[7] It recognizes that no forward-looking analysis or assumptions can be infallible. It permits Offer Floor mitigation to end when an entrant that appeared to be uneconomic before it entered the market actually demonstrates that it is economic over an extended period of time. The mitigation duration rule is therefore consistent with the November 2010 Order's objective that the NYISO's tariff neither over- nor under-mitigate potential buyer-side market power.[8]

The June 22 Order provided helpful guidance regarding the application of the mitigation duration rule to an entrant that is originally found to be exempt from Offer Floor mitigation but then loses the exemption. Specifically:

> in any past auction in which the applicable capacity price was below the properly-determined offer floor (and thus, the unit would not have cleared if the unit's offer was at the offer floor), it would be improper to count such an auction towards the number of auctions that the unit must clear before it is no longer subject to an offer floor. By contrast, in any past auction in which the unit cleared and the applicable capacity price equaled or exceeded the properly-determined offer floor if the offer floor had applied at that time, the unit would have cleared the auction

[5] Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

[6] *See* Services Tariff Attachment H §23.4.5.7.

[7] *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 (2010) ("November 2010 Order"); *see also, New York Independent System Operator, Inc.*, Letter Order, Docket No. ER10-3043-003 (issued March 17, 2011).

[8] *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 at P 47 (2010) .

> even if its offer price had been equal to the offer floor. As a result, it would be reasonable to count such an auction towards the required number of auctions needed for the unit to clear before terminating its offer floor.

Complainants' seek clarification that this guidance is only intended to apply when "there is no evidence that other market participants altered their behavior in response" to the unmitigated entry of an entrant that should have been subject to an Offer Floor under the NYISO's forward-looking exemption analysis.[9] They speculate that "demand response providers may have elected to not offer capacity into the auctions, developers may have put projects on hold, or existing generators may have deactivated units that would have been economic" but for the unmitigated entry. Complainants make no attempt to support these assertions or to justify the presumption that all auctions in which an "incorrectly" exempted entrant participated could not have yielded economically valid results.

Granting Complainants' request for clarification would effectively guarantee that no entrant that received an Offer Floor exemption, but then lost the exemption, would receive any "credit" under the mitigation duration rule for months that its capacity cleared in the auctions. It would be impossible for an entrant (or the NYISO) to make the required evidentiary showing regarding the thinking behind complex business decisions made by every participant (or potential participant) in the In-City capacity market over the course of many months. In addition to the sheer volume of information to be reviewed, much of it would be confidential and thus unavailable to a new entrant without the Commission's assistance. Moreover, even if a new entrant could practicably attempt the required analysis to show the actual impact of any one factor, such as the arrival of a new entrant, a single factor could not be isolated from the various others that go into business decisions. Even if it could be isolated, it would not be possible to

[9] Complainants' Request for Clarification at 3.

account for the ways in which a change in one market participant's behavior might have affected decisions made, and actions taken (or not taken), by others.

Thus, Complainants' proposal contradicts the established "mitigation duration" rule. If an entrant's exemption were successfully challenged by a competitor, Complainants propose that all of the entrant's UCAP would automatically be subject to an Offer Floor for at least twelve months even if the entrant's actual performance had been economic for one or more months, for all or a portion of the UCAP.

Such an outcome would be directly contrary to the June 22 Order, which clearly contemplated that entrants that lost their exemptions would be able to receive "credit" for past performance. Complainants' proposal would also undermine the mitigation duration rule because it would ignore an entrant's actual performance, for purely speculative reasons. It would require that entrants be treated as if they were uneconomic even when actual market evidence shows that such treatment would be unreasonable. Complainants' proposal is thus unreasonable and would result in over-mitigation of entrants whose performance has reasonably demonstrated that they are economic. Their request for clarification should be denied because it is asking the Commission to "clarify" the June 22 Order in a manner that contradicts its plain meaning, purpose, and intent.

II. The Requests for Clarification Regarding the Consideration of "Out-of-Market Revenues" in Buyer-Side Mitigation Analyses Should Be Denied

The June 22 Order confirmed that under the Services Tariff, the "NYISO's task is to verify a new entrant's Unit net CONE based on cost information supplied by the new entrant."[10]

[10] June 22 Order at P 93.

It emphasized that:

> The Services Tariff neither provides, nor is it necessary, for NYISO to consider any out-of-market revenues that may be received by the new entrant in determining the new entrant's Unit net CONE. Out-of-market revenues that may be received by the new entrant simply do not enter into the determination of either the gross cost of new entry, a figure based on a hypothetical unit established in the demand curve proceeding, or the projected energy and ancillary service revenues that are used in deriving the new entrant's Unit net CONE.[11]

Complainants and Exelon each ask for clarification that the June 22 Order requires the NYISO to consider out-of-market revenues,[12] notwithstanding the Order's conclusion that such revenues are not relevant to the analyses that the Services Tariff actually requires the NYISO to conduct. They would also have the NYISO account for the indirect benefits that an entrant might derive as a consequence of receiving out-of-market revenues, such as access to more favorable financing arrangements.[13]

Like Complainants' request regarding the mitigation duration rule, the request for "clarification" on the "out-of-market revenues" question constitutes an attempt to substantially revise the June 22 Order. Complainants and Exelon are seeking to expand the scope of the mitigation analysis established under the Services Tariff beyond the information that is actually pertinent to it. It appears that they would have the NYISO evaluate every term of every contract related to the development of an entrant's project. They apparently are pressing for the NYISO to ascertain the subjective motives that led parties to negotiate particular terms with developers and to incorporate this subjective element into the exemption analysis. Nothing in the June 22 Order supports imposing such a requirement on the NYISO.

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[11] *Id.*

[12] Complainants' Request for Clarification at 5-6; Exelon's Request for Clarification at 4.

[13] Exelon's Request for Clarification at 4.

Any attempt to interpret the June 22 Order as doing so would bring it into conflict with the Commission's September 30, 2008 order on rehearing in Docket No. EL07-39-002, *et al*.[14] In that order, the Commission abandoned an earlier requirement that buyer-side mitigation be restricted to "net buyers," agreeing with the NYISO and other parties that "the limitation is impractical to implement and would achieve little positive result"[15] and "raises significant complications . . . ."[16] "Clarifying" the June 22 Order as requested by Complainants and Exelon would introduce similar difficulties for no good purpose.

The NYISO has already explained in this proceeding that it "evaluate[s] contracts when and as necessary to validate costs identified by a developer and determine whether a cost is appropriate to use in a project's Unit Net CONE." The testimony of Mr. Boles affirmed that:

> [I]t is not the practice of the NYISO or its Consultants to merely accept the costs figures received from a developer, regardless of whether those costs were the Demand Curve peaking plant's costs. The NYISO and the Consultants scrutinize the data submitted and evaluate them to determine whether it is reasonable to assume that they accurately represent the Project's actual costs, and if an estimate, whether the estimate is reasonable. The NYISO, the Consultants, and the MMU also require clarifying and supporting information and documentation from the developer, if the information submitted raises questions.[17]

The NYISO's approach continues to be reasonable and consistent with the provisions of the Services Tariff; what Complainants and Exelon propose is not. Accordingly, their requests for clarification should be denied.

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[14] *New York Independent System Operator, Inc*., 124 FERC ¶ 61,301 (2008).

[15] *Id.* at P 28 (quoting NYISO) and at P 29 (accepting NYISO's rationale).

[16] *Id.* at P 29.

[17] *See Answer of the New York Independent System Operator, Inc.*, at Attachment 2 - Affidavit of Joshua A Boles at P 69, Docket No. EL11-42-000 (filed July 6, 2011, as modified July 7, 2011).

III. CONCLUSION

For the reasons stated above, the Commission should deny the requests for clarification submitted by the Complainants and by Exelon in this proceeding.

Respectfully submitted,

/s/ Gloria Kavanah

Gloria Kavanah, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
518.356.6103
gkavanah@nyiso.com

August 6, 2012

cc: Michael A. Bardee
Gregory Berson
Connie Caldwell
Anna Cochrane
Jignasa Gadani
Lance Hinrichs
Jeffrey Honeycutt
Michael Mc Laughlin
Kathleen E. Nieman
Daniel Nowak
Rachael Spiker

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, DC, this 6th day of August, 2012.

/s/Catherine Karimi
Hunton & Williams LLP
2200 Pennsylvania Ave, NW
Washington, DC 20037
(202) 955-1500