

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

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|---|---|-------------------------------|
| Independent Power Producers |) | |
| of New York, Inc., |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Docket No. EL13-62-000 |
| |) | |
| New York Independent System Operator, Inc. |) | |
| |) | |
| Respondent. |) | |

**INITIAL ANSWER OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
OPPOSING FAST TRACK PROCESSING**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this initial answer to the *Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc.* (“Complaint”) that was served at 4:45 PM on Friday, May 9, 2013. This initial answer explains why the Independent Power Producers of New York, Inc.’s (“Complainant’s”) request for fast track processing is unjustified, inconsistent with the Commission’s procedural rules, and should be rejected. The NYISO will answer the other elements of the Complaint by whatever deadline is established by the Commission.

¹ 18 C.F.R. § 385.213 (2013).

I. COMMUNICATIONS

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II. INITIAL ANSWER

The Complaint claims that the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") is unjust and unreasonable because it does not address alleged exercises of "buyer-side" market power involving existing resources.³ As the NYISO will explain in a subsequent answer on substantive issues, Complainant's theory is novel, but flawed, and it does not appear that any other market has adopted the kind of mitigation rules it seeks to impose on NYISO Market Participants. For purposes of this initial answer, it is sufficient to note that the Complaint seeks relief that would require revisions to the Services Tariff⁴ and includes

² Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2013)) is requested to the extent necessary to permit service on counsel for the NYISO in both Houston, TX and Washington, DC.

³ See, e.g., Complaint at 1-2.

⁴ See Complaint at 33-38.

specific proposed revisions to effectuate one of its proposals.⁵ Complainant’s proposed revisions were developed unilaterally. Its approach contravenes filed NYISO agreements (to which its members are signatories), and Commission precedent, requiring that proposed tariff revisions be reviewed through the NYISO’s “shared governance” process. That process requires the approval of the Management Committee and the NYISO Board of Directors, before proposed tariff revisions are submitted to the Commission under Section 205 of the Federal Power Act.

Complainant offers just a single paragraph in support of its request for fast tracking. It asserts that “[e]xpeditious processing” is needed because an existing resource has been used to exercise buyer-side market power since the February 2013 ICAP Spot Market Auction.⁶ The Complaint expressly requests expedited Commission action and the implementation of its requested relief “immediately” upon the issuance of an order.⁷ Complainant’s request for fast track processing is patently deficient and should be rejected. Rule 206(b)(11) is clear that the burden is on a party requesting fast track processing to “[e]xplain . . . why the standard processes will be not be adequate for expeditiously resolving the complaint.” There must be “a highly credible claim and persuasive showing that standard processes will not be capable of resolving the complaint promptly enough to provide meaningful relief.”⁸ Complainant has made no such showing.

Commission precedent is also clear that fast track processing is not suited for “complex issues” including specifically when a complaint seeks changes to tariff provisions that it alleges

⁵ See Complaint at n. 130.

⁶ 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”).

⁷ See Complaint at 37.

⁸ See “Fast Track Procedures” (Updated June 28, 2010) <<http://www.ferc.gov/legal/complaints/form-comp/fast-track.asp#skipnav>>.

are unjust, unreasonable, unduly discriminatory or otherwise in violation of Commission regulations or policy.⁹ As noted above, the Complaint includes a number of proposed tariff revisions and raises complex market and tariff issues of first impression. Complainant's members have previously argued that the inherent complexity of buyer-side mitigation issues justified filing answers that would normally be prohibited under the Commission's rules,¹⁰ or giving them additional time to respond to proposed tariff revisions.¹¹ They are therefore in no position to claim that the issues they have raised are not complex.

Complainant's request is also fundamentally unjustified and inequitable because it has been fully aware of the issues raised in the Complaint for many months. Complainant itself asserts that the purported market harm (*i.e.*, the supposed "artificial suppression" of NYCA capacity prices) occurred in the February 2013 ICAP Spot Market Auction. It bears emphasizing that the results of that auction were posted in January 2013, three and one-half months before the Complaint was filed. Moreover, Complainant has been fully aware since 2012 of the facts that underlie the issues that are the subject of the Complaint.¹² Indeed, their own papers highlight a

⁹ *Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999). *See also Iberdola Renewable Resources, Inc., et. al. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011) (citing *Amoco Energy Trading Corp. et al.*, refusing to grant fast track processing, and granting an extended answer and comment period in a case where Complainants sought relief, including tariff revisions aimed at addressing complex issues).

¹⁰ *See, e.g., Motion for Leave to File Answer and Answer of the New York City Suppliers*, Docket No. ER10-3043 at 5 (November 12, 2010).

¹¹ *See Motion to Intervene and for Extended Comment Deadline of Independent Power Producers of New York, Inc.*, Docket No. ER10-3043 at 5 (October 1, 2010) ("IPPNY and other interested parties should be afforded a reasonable amount of time to consult with experts and prepare thorough comments for the Commission to consider, particularly since there are complex and important issues involved.")

¹² *See Motion to Intervene of Independent Power Producers of New York, Inc.*, Docket No. ER13-405 (November 30, 2012).

New York Public Service Commission Order approving the Dunkirk term sheet on August 16, 2012 – *i.e.*, nine months ago.¹³ On January 7, 2013, Complainant filed a seventy one page protest in Docket No. ER13-405 that raised the same objections that are asserted in the Complaint to supposed exercises of buyer-side market power involving existing resources.¹⁴ It is hardly reasonable for Complainant to seek expedited Commission action now given that, even if there were any merit to its substantive claims,¹⁵ the “need” for expedited action is solely attributable to its own delay. Complainant’s request should be viewed with additional disfavor because of its admitted failure to address its concerns in the NYISO stakeholder process.¹⁶

Finally, the Commission has been clear that fast track processing is to be employed only in very limited circumstances because “of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding” and the potential for over-taxing the Commission’s limited resources.¹⁷ Given the circumstances in this case, Complainant should not be permitted to impose these burdens on the Commission, the NYISO, or the numerous stakeholders that have substantial interests in the outcome of this proceeding and are likely to participate in it.

Although the Complaint clearly fails to meet the requirements of Rule 206(b)(11) or related Commission precedents, the NYISO understands that it is ultimately for the Commission to govern its own proceedings and to decide the timing of when it will consider the Complaint.

¹³ See Complaint at 13.

¹⁴ See *Protest of Independent Power Producers of New York, Inc.*, (Docket No. ER13-405) (January 7, 2013).

¹⁵ The NYISO’s next answer in this proceeding will demonstrate that all of Complainant’s claims are without merit.

¹⁶ See Complaint at 37-38.

¹⁷ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999).

III. CONCLUSION

For the reasons set forth above the NYISO respectfully requests that the Commission reject Complainant's unjustified and defective request for fast-track processing.

Respectfully submitted,

/s/ Ted J. Murphy
Counsel for the
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cc: Travis Allen
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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the Complainant and 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 Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2012).

Dated at Washington, D.C. this 13th day of May 2013.

/s/ Catherine Karimi _____
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