

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

**New York Independent System Operator, Inc.) Docket Nos. ER12-2414-000
ER12-2414-001**

**THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.’S
ANSWER TO COMMENTS, AND REQUEST FOR LEAVE TO ANSWER,
AND ANSWER TO PROTESTS**

Pursuant to Rules 212 and 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 *Comments and Limited Protest of the New York City Suppliers* (“Comments”) filed on August 27, 2012 in this proceeding. The Comments address the NYISO’s August 6, 2012 compliance filing, as amended on August 7, 2012 (“Compliance Filing”). The Compliance Filing proposed tariff modifications in response to the Commission’s June 22, 2012 order in Docket No. EL11-42 (“June 22 Order”) regarding the NYISO’s buyer-side market power mitigation rules (“BSM Rules”).²

As further explained below, the NYC Suppliers’ proposed changes to the NYISO’s compliance tariff revisions should be rejected because they are unnecessary and would go beyond what is required by the June 22 Order.³ The NYC Suppliers have identified one area

¹ 18 C.F.R. §§385.212, 385.213 (2011).

² *Astoria Generator Co., L.P. v. New York Independent System Operator, Inc.*, 139 FERC ¶ 61,244 (2012) (“June 22 Order”). The BSM Rules, which are the subject of the June 22 Order, are the currently-effective buyer-side capacity market mitigation provisions in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) Attachment H, including revisions that were accepted by the Commission, effective November 27, 2010, in its series of orders in Docket No. ER10-3043. See June 22 Order at P 6.

³ The NYISO has limited its response to those issues for which it believes that providing additional information will best assist the Commission to reach its decision. The NYISO’s silence with respect to any particular argument or assertion should not be construed as acceptance or agreement. The NYISO silence with respect to the New York Transmission Owner’s protest should also not be construed

where the tariff revisions proposed in the Compliance Filing may benefit from clarification. If the Commission concludes that clarification of the point identified in Section II.C.3 below is needed, it should not accept the revisions offered by the NYC Suppliers but should instead adopt the clarifying changes suggested herein.

I. REQUEST FOR LEAVE TO ANSWER

The NYISO may answer the portions of the NYC Suppliers' pleading that are styled as comments as a matter of right.⁴ The Commission has discretion to accept answers to protests when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.⁵ The NYISO's answer satisfies those standards as it addresses inaccuracies and provides additional information that the Commission needs to fairly evaluate the arguments raised. The NYISO, therefore, respectfully requests that the Commission accept this answer.

II. ANSWER

A. The NYISO's Compliance Tariff Revisions Clearly and Correctly Provide that the NYISO Will Post Final Exempt or Non-Exempt Determinations

The NYISO's proposed compliance revisions to section 23.4.5.7.8 state that the NYISO "shall post on its website the identity of the project in a Mitigated Capacity Zone⁶ and the

as acceptance or agreement. *See Motion to Intervene and Protest of the New York Transmission Owners*, ER12-2414-000 (filed August 28, 2012).

⁴ *See* 18 C.F.R. 385.213(a)(3) (2011).

⁵ *See, e.g., Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207 at P 44 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

⁶ Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO's Services Tariff, and if not defined therein, in the NYISO's Open Access Transmission Tariff.

determination of either exempt or non-exempt as soon as the determination is final.”⁷ The NYC Suppliers express concern that “to the extent that the NYISO intends to post mitigation exemption determinations following each round of the Cost Allocation process” that the proposed language could be “misconstrued as meaning that a mitigation exemption determination is final when posted, even if the Cost Allocation process under Attachment S of the OATT for the applicable class year has not yet concluded.”⁸ They request that the NYISO be directed to clarify that “irrespective of when they are posted, mitigation exemption determinations will not be considered final until the Cost Allocation process has been completed.”⁹

There is no need to grant this request. As the NYC Suppliers noted, section 23.4.5.7.3.3 of the Services Tariff is clear that the exemption determinations made following each round of the Class Year process are not final. Final determinations for Examined Facilities in a Class Year and those being examined concurrent with the Class Year, do not exist until after the completion of Class Year Project Cost Allocation.¹⁰ The June 22 Order is clear that the NYISO is only required to post “final” exemption determinations.¹¹ The NYISO does not believe that there is any reason to go beyond its compliance obligations and that it would not be appropriate to post non-final determinations. The NYISO also does not intend to make such postings. For

⁷ Comments at 3.

⁸ *Id.*

⁹ *Id.* Section 31.5.7.3.3 provides that the NYISO shall “inform the project whether the Offer Floor exemption ... is applicable as soon as practicable after the completion of the relevant Project Cost Allocation or Revised Project Cost Allocation..... ”

¹⁰ Examined Facilities that may not be in a Class Year but would be examined concurrent with a Class Year are described in Section 23.4.5.7.3 (II) and (III).

¹¹ June 22 Order at P 51 (requiring that the NYISO “file tariff revisions within 45 days of the date of this order to require the disclosure of the identity of the project and the final exempt/non-exempt determination, as soon as they are final”).

those reasons, there is no danger that the NYISO's proposed compliance revision to section 23.4.5.7.8 would be "misconstrued" as transforming non-final determinations into final determinations. Thus, no clarification, or additional revisions, to the NYISO's proposed language is necessary.

B. The NYISO's Proposed Compliance Tariff Revisions Comply with the June 22 Order's Directives Regarding the Market Monitoring Unit's Obligation to Prepare a Written Report

The June 22 Order directed the NYISO to revise the Services Tariff to "require the preparation of a written report by NYISO's MMU confirming the NYISO's mitigation and exemption determinations and calculations were conducted in accordance with terms of the Services Tariff, and, if not identifying the flaws inherent the NYISO's approach."¹² The NYISO's proposed tariff revisions comply with this requirement by expressly incorporating the language of the June 22 Order. The NYISO proposed to revise section 30.10.4 of Attachment O to the Services Tariff to state that the MMU "shall prepare a written report confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 and 23.4.5.7.7 of the Market Mitigation Measures were conducted in accordance with the terms of the Services Tariff." A conforming revision to section 30.4.6.2.11 of Attachment O states that the MMU "shall prepare a written report confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Section 23.4.5.7.2 of the Market Mitigation Measures were conducted in accordance with the terms of the Services Tariff."

The NYC Suppliers claim that the NYISO's proposed compliance revisions should reference additional Attachment H provisions that "govern the NYISO's mitigation exemption

¹² June 22 Order at P 130.

determinations’’¹³ They therefore ask that the NYISO be directed to make clear that “the MMU is required to examine, and report on, whether the NYISO properly applied all of the Buyer-Side Market Power Rules.’’¹⁴

The Commission should reject this request because the NYISO’s proposed revisions already fully comply with the June 22 Order and make it clear that the MMU is responsible for evaluating the entirety of an exemption and Offer Floor determination. The MMU must consider the elements of an exemption analysis before it can reasonably “confirm” that it was correctly made or identify the flaws. No purpose would be served by revising the NYISO’s compliance tariff revisions to expressly reference every provision that has to do with exemption and Offer Floor determinations. All relevant tariff provisions are already encompassed within the scope of the language that the NYISO proposed. In addition, the NYC Suppliers’ proposal to specifically require the MMU to address the NYISO’s application of all of the BSM Rules would unnecessarily dictate how the MMU must write its report. The Commission should leave to the MMU to determine what specific issues warrant discussion in its report instead of requiring a detailed treatment of every possible issue.

The NYC Suppliers also note that proposed section 30.10.4 references both sections 23.4.5.7.2¹⁵ and 23.4.5.7.7¹⁶ and suggest that proposed section 30.4.6.2.11 “omits” a reference to section 23.4.5.7.7.¹⁷ This is not correct because the MMU’s obligation to report on determinations made pursuant to 23.4.5.7.7 is already included in the base language in

¹³ Comments at 4.

¹⁴ *Id.*

¹⁵ Section 23.4.5.7.2 addresses the MMU’s obligation to report on the NYISO’s mitigation exemption or Offer Floor determinations.

¹⁶ Section 23.4.5.7.7 addresses the MMU’s obligation to report on the NYISO’s determination that a project should be grandfathered from mitigation in a NCZ.

¹⁷ Comments at 4.

30.4.6.2.11.¹⁸ Specifically, proposed section 30.4.6.2.11, as revised in the Compliance Filing, states:

When evaluating a request by a Developer or Interconnection Customer pursuant to Section 23.4.5.7 of the Market Mitigation Measures, the ISO shall seek comment from the Market Monitoring Unit on matters relating to the determination of price projections and cost calculations. As required by Section 23.4.5.7.8 of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Section 23.4.5.7.2 of the Market Mitigation Measures were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO's approach. This report shall be presented concurrent with the ISO's posting of its mitigation exemption determinations. Pursuant to Section 23.4.5.7.7 of the Market Mitigation Measures, the ISO shall also consult with the Market Monitoring Unit when evaluating whether any existing or proposed Generator or UDR project in a Mitigated Capacity Zone, except New York City, shall be exempted from an Offer Floor under that Section. Prior to the ISO making an exemption determination pursuant to Section 23.4.5.7.7, the Market Monitoring Unit shall provide the ISO a written opinion and recommendation. The Market Monitoring Unit shall also provide a public report on its assessment of an ISO determination that an existing or proposed Generator or UDR project is exempt from an Offer Floor under Section 23.4.5.7.7. *See* Market Mitigation Measures Section 23.4.5.7.

As the language above shows, there is no omission. The NYISO has already proposed language requiring the MMU to evaluate any NYISO determination that an existing or proposed project in a Mitigated Capacity Zone be grandfathered from an Offer Floor pursuant to section 23.4.5.7.7. Thus, there is no need to further revise proposed section 30.4.6.2.11.

¹⁸ Note that the 30.4.6.2.11 language referencing the MMU's obligations under 23.4.5.7.7 are currently pending tariff changes included in the NYISO's New Capacity Zone Market Mitigation Measures tariff revisions submitted in the NYISO's June 29, 2012 filing in Docket No. ER12-360-001 ("NCZ Compliance Filing"). As explained in the NCZ Compliance Filing, the changes to Attachment O section 30.4.6.2.11 were made to ensure consistency with the revisions directed in the June 22 Order. *See* Compliance Filing at n. 15 and NCZ Compliance Filing at n.2. Though these sentences were not included in the excerpt in the filing letter regarding these compliance directives, the attached tariff sections clearly include this language.

C. The Proposed Compliance Tariff Revisions Comply with the June 22 Order's Directives Regarding Inflation Adjustments

1. The Proposed Compliance Tariff Language Regarding "Relevant ICAP Demand Curves" and "Relevant Effective ICAP Demand Curves" Was Carefully Crafted to Comply with the June 22 Order

The NYC Suppliers request that the NYISO be directed to modify its proposed compliance tariff language in sections 23.4.5.7 and 23.4.5.7.4 to replace the phrases "relevant effective ICAP Demand Curves" and "relevant ICAP Demand Curve" with language requiring the application of the "currently effective" ICAP Demand Curve.¹⁹ The NYC Suppliers' request should be rejected.

The June 22 Order directed that:

if the Commission has accepted and made effective updated demand curves at the time of the mitigation determination, then we agree that NYISO should use such demand curve values in making the mitigation exemption and offer floor determinations. However, if the Commission has not accepted proposed updated demand curves applicable to the periods used in the mitigation test at the time of such mitigation exemption determination, then, consistent with section 23.4.5.7.4 of NYISO's Services Tariff, the most recently approved demand curves must be used. This is true for both Default net CONE and in calculating projected clearing prices.²⁰

As the NYISO explained in its request for clarification, it understands the June 22 Order's directive to require it to use the: (1) "escalation factor from the relevant ICAP Demand Curve to escalate the Unit Net CONE and projected ICAP Demand Curve prices for any year covered by the Part B test for which there are accepted ICAP Demand Curves"; and (2) "inflation rate

¹⁹ Comments at 6.

²⁰ June 22 Order at P 86.

component of the currently effective ICAP Demand Curve escalation factor” for any year “encompassed by the Part B test for which the accepted ICAP Demand Curves do not apply.”²¹

The NYISO understands the Commission’s directive to require the application of accepted, but not necessarily currently effective, ICAP Demand Curves in certain situations. Specifically, such ICAP Demand Curves would be used where there is a need to make a determination during a period where the Commission has accepted a new ICAP Demand Curve and made it effective for a future period. The “currently effective” characterization would not clearly allow the NYISO to use in a BSM examination performed on February 1, 2014, triennially reset ICAP Demand Curves accepted by the Commission on January 30, 2014 made effective for the Capability Years that begin May 1, 2014. Consistent with that understanding, the language as proposed in sections 23.4.5.7 and 23.4.5.7.4 was carefully worded to ensure that the tariff allows the NYISO to conduct its analyses in a manner that permits the use of either the most recently accepted or currently effective ICAP Demand Curve, as appropriate. Therefore, the Commission should accept the NYISO’s compliance tariff revisions as proposed without further modification.

2. The Proposed Compliance Tariff Language to Address the Escalation Factor for Unit Net CONE Calculations Does Not Require the Addition of a Reference to “Mitigation Net CONE”

The NYC Suppliers argue that the NYISO should be directed to modify its proposed compliance tariff changes to ensure that the escalation factor used for Unit Net CONE calculations also be applied to Mitigation Net CONE determinations. Specifically, they claim that the NYISO “omits to include Mitigation Net CONE as a value to be identified consistent

²¹ *Request for Expedited Clarification, and Alternative Request for Rehearing, of the New York Independent System Operator, Inc.* at 6, Docket No. EL11-42-000 (filed July 23, 2012) (“Request for Clarification”).

with section 23.4.5.7.4.”²² The NYC Suppliers’ request should be rejected. The proposed compliance tariff revisions, as drafted, clearly provide that the NYISO will “identify Unit Net CONE and the price on the ICAP Demand Curve projected for a future Mitigation Study Period consistent with 23.4.5.7.4.” The changes to section 23.4.5.7.4 provide that Unit Net CONE and the price on the ICAP Demand Curve projected for a future Mitigation Study Period will be identified using the escalation factor of the relevant ICAP Demand Curves, or for years where the accepted ICAP Demand Curves do not apply, the inflation rate component of the escalation factor for the relevant ICAP Demand Curves.

There is no need to reference “Mitigation Net CONE” in that section, because the revisions already properly establish the escalation or inflation factor to be applied. This is because the proposed²³ definition of “Mitigation Net CONE” states that it “shall mean the capacity price on the currently effective In-City Demand Curve corresponding to the average amount of excess capacity above the In-City Installed Capacity requirement, expressed as a percentage of that requirement that formed the basis for the Demand Curve approved by the Commission.” The tariff language proposed by the NYISO was worded to precisely identify the component of Mitigation Net CONE to which the escalation or inflation adjustment applies. The proposed language indicates that the escalation or inflation adjustment is to be made with respect to “the price on the ICAP Demand Curve projected for a future Mitigation Study Period,” which is the only component of Mitigation Net CONE that should be adjusted in that manner. Thus, the NYISO’s proposed language complies with the June 22 Order and does not need to be modified as requested by the NYC Suppliers.

²² Comments at 6.

²³ The term “Mitigation Net CONE” was proposed in the NYISO’s compliance filing in Docket No. ER10-2371-000, which is pending before the Commission.

3. The NYISO Would Not Object to Enhancing the Clarity of Certain of its Proposed Compliance Tariff Revisions Regarding the Application of Inflation to Offer Floors

The NYC Suppliers assert that the NYISO’s proposed modifications to Sections 23.4.5.7.3.6, 23.4.5.7.2.4, and 23.4.5.6.3.2 should be modified to clarify that the NYISO “will use the value of the project’s inflation adjusted Unit Net CONE for the first year of the Mitigation Study Period, as calculated pursuant to Section 23.4.5.6.3.6.”²⁴ The NYISO would not object to making revisions to enhance the clarity of its proposed tariff language to address this issue. The NYISO does not believe that the specific modifications proposed by the NYC Suppliers should be adopted. For the reasons set forth in the Request for Clarification,²⁵ their proposed changes are not consistent with the NYISO’s understanding of the June 22 Order.

As the NYC Suppliers assert, the NYISO’s modifications to sections 23.4.5.7.3.6, 23.4.5.7.2.4, and 23.4.5.7.3.2 establish that the NYISO will make inflation adjustments to maintain the originally determined Offer Floor in real terms while making the value comparable to the year in which mitigation occurs. The NYISO’s proposed revisions also provide for adjustments in response to early entry by allowing for deflation where appropriate.²⁶ In the interest of further clarity, the NYISO would be open to adding further language to enhance the clarity of the proposed revision. Specifically, the NYISO could include a reference to Mitigation Study Period, in the first sentence of 23.4.5.7.3.6, to clarify that the value to be used is the project’s inflation adjusted first year value. This additional revision could provide that “the value equal to the first of the three year values in the Mitigation Study Period that comprise its

²⁴ Comments at 7.

²⁵ Request for Clarification at 8-10.

²⁶ *Id.*

Unit Net CONE” would be utilized.²⁷ Further, a reference to section 23.4.5.7.3.6 could be added in both 23.4.5.7.2.4(i) and 23.4.5.7.3.2(i) to clarify that the value referred to as the “first year of its Unit Net CONE” in those sections is the Unit Net CONE for the first year of the Mitigation Study Period.²⁸

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the NYISO respectfully requests that the Commission, to the extent necessary, grant it leave to answer and take action as further specified herein.

Respectfully submitted,

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²⁷ The effect of this possible additional clarification would be that Section 23.4.5.7.3.6 would read: If an Installed Capacity Supplier demonstrates to the reasonable satisfaction of the ISO that the value equal to the first of the three year values in the Mitigation Study Period that comprise its Unit Net CONE is less than any Offer Floor that would be applicable to the Installed Capacity Supplier, then its Offer Floor shall be reduced to a numerical value equal to the first year of its Unit Net CONE.

²⁸ The effect of this possible additional clarification would be that Sections 23.4.5.7.2.4(i) and 23.4.5.7.3.2(i) would read: (i) the first year value of its Unit Net CONE, calculated pursuant to 23.4.5.7.3.6.

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 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 (2011).

Dated at Washington, D.C. this 11th day of September 2012.

/s/ Catherine Karimi

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