

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

New York Independent System Operator, Inc.)	
)	Docket Nos. ER16-120-007
)	EL15-37-___
)	

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

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 request for leave to answer and answer (“Answer”).² The Answer responds to the Independent Power Producers of New York, Inc. (“IPPNY”)³ protest of the NYISO’s fourth Generator Deactivation Process compliance filing submitted on May 23, 2018 in the above-captioned proceeding (“Compliance Filing”).⁴ This Answer also responds to comments that the NYISO’s independent Market Monitoring Unit, Potomac Economics, submitted in support of the Compliance Filing.⁵

The NYISO respectfully requests that the Commission accept its Compliance Filing with only the limited change proposed in Section III.C below. The NYISO’s proposed revisions to its Open Access Transmission Tariff (“OATT”) and its Market Administration and Control Area Services Tariff (“Services Tariff”) were carefully developed to bring the NYISO into full

¹ 18 C.F.R. § 385.213.

² Capitalized terms not defined in this Answer shall have the meaning set forth in the NYISO Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariff (“Services Tariff”), including in the proposed revisions to those tariffs in the NYISO’s compliance filing.

³ *Protest of Independent Power Producers of New York, Inc.*, Docket No. ER16-120-007 (June 13, 2018) (“IPPNY Protest”).

⁴ *N.Y. Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER16-120-007 (May 23, 2018).

⁵ *Motion to Intervene and Comments of the New York ISO’s Market Monitoring Unit*, Docket Nos. ER16-120-007 and EL15-37 (June 13, 2018) (“Potomac Comments”).

compliance with the directives of the Commission’s April 23, 2018 *Order on Clarification and Rehearing* in the above-captioned proceeding (“April 2018 Order”).⁶ As explained below, IPPNY’s proposed changes to the Tariff provisions NYISO submitted in its Compliance Filing are inconsistent with the Commission’s directives in its April 2018 Order, and do not adequately account for the significant flexibility that the NYISO rules give Generators to decide when they will deactivate.

I. REQUEST FOR LEAVE TO ANSWER

The NYISO may answer pleadings that are styled as comments as a matter of right.⁷ The Commission has discretion to, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.⁸ The NYISO’s Answer to the IPPNY protest satisfies those standards and should be accepted because it provides clarification and additional information that will help the Commission fully evaluate the arguments in this proceeding. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

⁶ *N.Y. Indep. Sys. Operator, Inc.*, Order on Clarification and Rehearing, 163 FERC ¶ 61,047 (2018) (“April 2018 Order”).

⁷ See 18 C.F.R. § 385.213(a)(3).

⁸ 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] decisionmaking 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); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission’s decision-making process).

II. BACKGROUND

In an order issued February 19, 2015, the Commission determined that the NYISO is the appropriate entity to administer “reliability-must-run” (“RMR”) service in New York under its tariffs, with the option to enter into an RMR Agreement with a Generator if necessary (“Initial RMR Order”).⁹ The Initial RMR Order directed the NYISO to submit proposed tariff revisions to establish a process to govern “the retention of and compensation to generating units required for reliability, including procedures for designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service.”¹⁰

In response to these directives, the NYISO submitted three compliance filings to implement reliability-must-run requirements through a new Generator Deactivation Process located in Attachment FF of the OATT, along with related compensation and market monitoring requirements in the OATT and Services Tariff. The Commission largely accepted these provisions in its First, Second and Third Compliance Orders.¹¹

On December 18, 2017, Entergy Nuclear Power Marketing LLC (“Entergy”) filed a request for clarification or, in the alternative, rehearing of the Commission’s Second Compliance Order. Entergy sought clarification of the deadline by which the NYISO needed to complete its final physical withholding assessment for the Indian Point Energy Center Units 2 and 3 (“Indian Point”). The April 2018 Order granted, in part, and denied, in part, Entergy’s requested

⁹ *N.Y. Indep. Sys. Operator, Inc.*, Order Instituting Section 206 Proceeding and Directing Filing to Establish Reliability Must Run Tariff Provisions, 150 FERC ¶ 61,116 (2015) (“Initial RMR Order”).

¹⁰ Initial RMR Order at P 11.

¹¹ See Letter Order in Docket Nos. ER16-120-005 and -006 (April 24, 2018) (“Third Compliance Order”); *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 161 FERC ¶ 61,189 at P 11 (2017) (“Second Compliance Order”); *N.Y. Indep. Sys. Operator, Inc.*, Order on Compliance and Rehearing, 155 FERC ¶ 61,076 at P 14 (2016) (“First Compliance Order”).

clarification. Paragraphs 16 and 17 of the April 2018 Order instructed the NYISO to submit a further Generator Deactivation Process compliance filing “to propose revisions to its OATT and/or Services Tariff to establish a timeline for completing final market power reviews (if needed) to provide greater transparency and certainty to deactivating generators and the NYISOadministered wholesale markets...”

Paragraph 17 of the April 2018 Order provided guidance on how the NYISO should develop its timeline for completing market power reviews.

17. ...In recognition of the variability in the amount of advance notice a generator may give of its planned deactivation, and the need to ensure that the data used in the market power review reasonably reflects the market conditions at the time of deactivation, **NYISO should set a deadline for completing final market power reviews (if needed) working back from the proposed deactivation date rather than starting from the submission of a complete generator deactivation notice.** This is because the final market power review may be less effective with data and assumptions too far removed from a generator’s actual deactivation date. If the data and assumptions do not reflect the market conditions close to the time of deactivation, NYISO will be unable to properly “assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices.” [Footnotes omitted, emphasis added.]

The Tariff revisions the NYISO proposed in its Compliance Filing are consistent with the Commission’s guidance and are supported by the NYISO’s external Market Monitoring Unit, Potomac Economics. As explained in greater detail below, IPPNY’s proposed changes to the NYISO’s proposed Tariff revisions (1) would require NYISO to provide “final” physical withholding determinations to Generators more than a year in advance of the date by which a Generator must deactivate under the NYISO Tariffs; and (2) ignore the NYISO’s need to obtain sufficient information from the Generator before the NYISO can issue a final physical withholding determination.

Although the NYISO is opposed to the Tariff revisions that IPPNY proposed, the NYISO has considered IPPNY’s concern that “NYISO’s proposal to provide the physical withholding

determination 30 days before the end of the deactivation process does not provide a reasonably adequate amount of time for a Market Participant to ... effectively implement the measures necessary to deactivate its Generator.”¹² The NYISO proposes a compromise for the Commission’s consideration to address IPPNY’s concern in Section III.C. of this Answer.

III. ANSWER

A. The NYISO’s Proposal to Issue a Final Market Power Determination in Advance of a Generator’s Actual Deactivation is Appropriate Because the Tariff Permits a Generator to Deactivate a Year or More After the Deactivation Date Specified in its Generator Deactivation Notice

Section 38.14.1 of the NYISO’s accepted and effective OATT defines the timeframe within which a Generator that has submitted a complete Generator Deactivation Notice may be Retired or enter into a Mothball Outage. The Tariff requires the Generator to enter the date specified in its Generator Deactivation Notice “within 365 days of: (i) the conclusion of the 365-day notice period, or (ii) the date specified in the Generator Deactivation Notice for the Generator to be retired or enter into a Mothball Outage if the Market Participant provided greater than 365 days prior notice.”

Under the quoted Tariff rules, a Generator that submits a Generator Deactivation Notice that states the Generator plans to deactivate 91 days after the NYISO determines its Generator Deactivation Notice is “complete” may permissibly deactivate up to 639 days after the date specified in the Generator Deactivation Notice. A Generator that provides two years advance notice of its planned deactivation is permitted to deactivate up to three years after the NYISO determined its Generator Deactivation Notice to be complete.

¹² IPPNY protest at 2.

The Tariff rules proposed in the NYISO's Compliance Filing take into account the significant degree of flexibility Generators are granted to choose their actual deactivation date. The NYISO's proposed rules effectively require the Generator to request a final physical withholding determination from the NYISO at least 60 days before the Generator actually intends to deactivate,¹³ or at least 60 days before an irrevocable decision related to the Generator's deactivation must be made.¹⁴

IPPNY asks the Commission to instead require the NYISO to issue a final market power determination based on the deactivation date specified in a Generator Deactivation Notice.¹⁵ Because a Generator deactivation notice may specify a deactivation date that is a year or more before the date on which a Generator actually deactivates, IPPNY's proposal is not consistent with the Commission's stated concern that:

...the final market power review may be less effective with data and assumptions too far removed from a generator's actual deactivation date. If the data and assumptions do not reflect the market conditions close to the time of deactivation, NYISO will be unable to properly "assess whether the proposal or decision has a legitimate economic justification or is based on an effort to withhold Installed Capacity physically in order to affect prices."⁵¹

⁵¹ NYISO, Services Tariff, Attach. H, § 23.4.5.6 (0.0.0).

The Tariff revisions that the NYISO filed are designed to ensure that the final physical withholding determination that the NYISO issues will not be "too far removed from a generator's actual deactivation date." The Commission should accept the NYISO's proposal.

¹³ See proposed Services Tariff Section 23.4.5.6.4.2.1.

¹⁴ See proposed Services Tariff Section 23.4.5.6.4.2.2.

¹⁵ The NYISO expects the deactivation date provided in the Generator Deactivation Notice to be a good faith estimate. As explained above, the NYISO's accepted Tariff rules do not require the Generator to deactivate on the date specified in its Generator Deactivation Notice. See OATT Section 38.14.1.

B. IPPNY’s Proposed Rules Would Require NYISO to Issue a Final Physical Withholding Determination Even If NYISO Lacks Necessary Information

The Tariff revisions that the NYISO proposed in its Compliance Filing make the NYISO’s receipt of sufficient information to perform a physical withholding determination a prerequisite to the NYISO’s obligation to issue a final physical withholding determination.¹⁶ IPPNY’s protest (at 3-4) seeks to impose firm deadlines for completion of a final physical withholding determination on the NYISO, but does not include any rules to ensure that the NYISO will have the information it requires to issue such a determination by IPPNY’s proposed deadlines. The Commission should accept the NYISO’s better-designed proposal, which only imposes an obligation on the NYISO to issue a final physical withholding determination when the NYISO has the information it requires to perform the necessary underlying analysis.

C. NYISO Proposal to Address IPPNY Concern About Need for Additional Time Between Issuance of Final Physical Withholding Determination and Generator Deactivation Date

The NYISO has considered IPPNY’s concern that “NYISO’s proposal to provide the physical withholding determination 30 days before the end of the deactivation process does not provide a reasonably adequate amount of time for a Market Participant to ... effectively implement the measures necessary to deactivate its Generator.” Although the NYISO believes 30-days prior notice should be more than sufficient to permit a Market Participant to complete a planned series of deactivation-related activities, the NYISO has identified a few extreme cases where IPPNY’s argument might raise a valid concern. To address these outliers, the NYISO would not be opposed to issuing a final physical withholding determination at least 60 days

¹⁶ See proposed Services Tariff Section 23.4.5.6.4.1.

before the updated deactivation date specified in the Market Participant's written notice to the NYISO.

In order to effectuate this compromise, the following Market Services Tariff provisions that the NYISO proposed in its Compliance Filing would need to be modified consistent with the changes that are redlined below:

23.4.5.6.4.2.1 **Based on deactivation date.** At least sixtyninety days before the date the Generator determines it will timely (consistent with Section 38.14.1 of Attachment FF to the ISO OATT) deactivate, the Market Participant (which is also a Market Party) may notify the ISO in writing of the updated deactivation date and request that the ISO issue a final physical withholding determination to the Market Party. The ISO shall issue its final determination at least 3060 days before the updated deactivation date specified in the Market Participant's written notice....
and

23.4.5.6.4.2.2.1 At least sixtyninety days before the date the irreversible action, inaction or event specified by the ISO in its notice to the Market Participant will be taken, occur or come to pass (the "trigger date"), the Market Participant may notify the ISO in writing of the trigger date and request that the ISO issue a final physical withholding determination to the Market Party. The Market Participant's notice must explain why the date it selected is the appropriate trigger date. If the ISO determines that the trigger date specified by the Market Participant is reasonable, then the ISO

shall issue its final physical withholding determination at least 3060 days before the trigger date specified in the Market Participant's notice....

The NYISO would oppose any changes to (or deletions from) the Tariff revisions it submitted in its Compliance Filing beyond the redlined changes to the dates that are set forth above to address IPPNY's concerns.

D. NYISO Agrees With Potomac Economics' Position that a Significant Financial Consequence May Satisfy the "Irrevocable Action or Inaction" Requirement Proposed in the NYISO's Compliance Filing

The Tariff revisions that the NYISO submitted with its Compliance Filing permit Market Participants that identify "a point in the process of deactivating a Generator after which the deactivation process will become, essentially and practicably, irreversible"¹⁷ to obtain final physical withholding determinations from the NYISO in advance of these irreversible actions, decisions not to act, or events. Potomac Economics addressed how it expects the NYISO will implement the "irrevocable action or inaction" standard on pages 3 and 4 of its comments:

The proposed tariff provision requires the NYISO to consider whether the deactivation process "will become, essentially and practicably, irreversible" beyond the trigger date. In some cases, it would be straightforward to determine whether a particular decision would be irreversible in the strictest sense. However, the proposed tariff language allows for the NYISO to apply reasonable judgement in cases where the practical implications of a particular decision would be expected to set a generator on a path towards deactivation. [Footnote omitted.]

For example, a nuclear plant may be able to defer refueling beyond the usual cycle, but this would lead it to forego significant energy market revenues without corresponding cost reductions. Thus, the decision to forego refueling would not be strictly irreversible, but it would adversely affect the outlook for the project to a significant degree. If the project was already uneconomic, the decision to forego refueling would significantly exacerbate the situation. Similarly, there may be other types of capital expenditures (*e.g.* major maintenance expenditures), which if deferred, could result in higher costs or unreasonably increase the risk of reliable operation. Hence, delaying such decisions to act (or not act) could render

¹⁷ See proposed Services Tariff Section 23.4.5.6.4.2.2.

the unit more uneconomic and may not be consistent with good utility practice. **If the magnitude of such capital expenditures was large relative to the overall economics of the project, such capital expenditures could be deemed “practicably irreversible,” while if the capital expenditures were relatively modest, they would not be deemed as such.** We believe that the proposed tariff language would allow the NYISO to consider and classify such decisions appropriately as practicably irreversible for the purpose of physical withholding evaluations. [Emphasis added.]

On page five and in footnote 12 of the NYISO’s transmittal letter submitting its Compliance Filing, the NYISO indicated that it did not intend for a “purely economic consequence” to satisfy the proposed “irreversible action, inaction, or event” standard. However, the NYISO has considered Potomac Economics’ comments and agrees with Potomac Economics that significant financial consequences “could be deemed ‘practicably irreversible,’” while relatively modest financial consequences should not satisfy the proposed standard.¹⁸

¹⁸ Potomac Comments at 4.

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and accept the NYISO's Compliance Filing in the above-referenced docket without modification, or with only the modifications proposed in Section III.C of this Answer.

Respectfully submitted,

By: /s/ Alex M. Schnell

Alex M. Schnell, Assistant General Counsel/
Registered Corporate Counsel
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
aschnell@nyiso.com

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cc: Anna Cochrane
James Danly
Jignasa Gadani
Jette Gebhart
Kurt Longo
David Morenoff
Daniel Nowak
Larry Parkinson
Douglas Roe
Kathleen Schnorf
Gary Will