

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

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

**LIMITED ANSWER OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO COMMENTS OF TC RAVENSWOOD, LLC**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) submits this answer to the *Comments of TC Ravenswood, LLC* (“TCR Comments”) that were filed on May 30, 2013 in this proceeding.² This answer does not address the TCR Comments’ arguments to the extent that they merely repeat or build on arguments made in the underlying *Complaint Requesting Fast-Track Processing of the Independent Power Producers of New York, Inc.* (“IPPNY Complaint”) in this proceeding. The NYISO’s May 30 answer in this proceeding (“NYISO Answer”), and the supporting Affidavit of Dr. David B. Patton (“Patton Affidavit”) that was incorporated therewith, comprehensively refuted the IPPNY Complaint. Therefore, there is no need for the NYISO to

¹ 18 C.F.R. § 385.213 (2013).

² Because IPPNY’s pleading is styled as comments the NYISO is entitled to answer as of right under Rule 213. To the extent that the Commission were to conclude that the NYISO may not submit this answer as of right, the NYISO respectfully requests that the Commission exercise its discretion to accept this answer because it will help to clarify the issues in this proceeding.

respond to claims by TCR that echo,³ or represent minor variations of,⁴ claims that have already been shown to be invalid because they are predicated on fundamental flaws.⁵

This answer is limited to addressing assertions by TCR that go beyond the IPPNY Complaint's arguments concerning alleged "artificial price suppression." Specifically, TCR has suggested that the NYISO is giving its "tacit approval" or otherwise failing to act⁶ in the face of conduct that constitutes "market manipulation" or "fraud."⁷ All such assertions are unequivocally false. The Patton Affidavit was quite clear that there is nothing anti-competitive about the bidding requirement in the Cayuga Reliability Support Services Agreement, and that may exist in the Dunkirk Reliability Support Services Agreement.⁸ Consequently, there is no basis whatsoever for TCR to invoke Section 222 of the Federal Power Act,⁹ the elements of market manipulation claims established by Order No. 670,¹⁰ or any other Commission market manipulation precedent in this proceeding. Nor could TCR possibly show that the NYISO possessed the *scienter* required for a plausible market manipulation claim¹¹ when the NYISO

³ See, e.g., TCR Comments at Section I.A to the extent that they repeat "artificial price suppression" arguments in the IPPNY Complaint.

⁴ See, e.g., TCR Comments at Section I.B (arguing that the IPPNY Complaint's alternate request for relief, i.e., prohibiting supposedly "uneconomically retained" resources from participating in the capacity market, is preferable to requiring such resources to offer at their going forward costs.) The NYISO Answer and Patton Affidavit establish that neither of these "remedies" is justified.

⁵ To be clear, the fact that the NYISO has concluded that there is no need for it to address these points in this pleading, or any other points in the TCR Comments not mentioned herein, should not be construed as the NYISO's acceptance of, or agreement with, any argument made in the TCR Comments.

⁶ See TCR Comments at 2, 16, 18, 22, and 25.

⁷ See TCR Comments at 4, 9, 10-12.

⁸ Patton Affidavit at PP 28-32.

⁹ 16 U.S.C. § 824v (2006).

¹⁰ 18 C.F.R. § 1c.2(a) (2010).

¹¹ See, e.g., *Richard Blumenthal, Attorney General for the State of Connecticut v. ISO New England, et al.*, 132 FERC ¶ 63,017 at P 88 ("[t]he prohibited behavior must exhibit the requisite

was consistently advised by the entity responsible for identifying anti-competitive conduct, *i.e.*, the independent Market Monitoring Unit (“MMU”),¹² that the concerns expressed in both the IPPNY Complaint and TCR Comments were, and are, without merit.

As the NYISO has previously explained,¹³ and re-emphasizes now, the Services Tariff requires that it actively monitor the markets for conduct that would “substantially distort or impair the competitiveness of any of the ISO Administered Markets.”¹⁴ Among other things, the NYISO’s Market Mitigation and Analysis Department must (and would) alert the independent MMU of any “market-related concerns (including, but not limited to, possible Market Violations) it identifies.”¹⁵ The NYISO’s obligations include taking necessary action to address any conduct that would be deemed a market violation or an abuse of market power.¹⁶ The MMU is also required to identify and report any “Market Violations, market design flaws and market power abuses.”¹⁷ The NYISO is very mindful of these responsibilities. The simple fact is that neither the IPPNY Complaint nor the TCR Comments have identified anti-competitive conduct, let alone market manipulation, that would require the NYISO to take action.

scienter”); *see also Prohibition of Energy Market Manipulation*, Order No. 670, 114 FERC ¶ 61,047 at P 49 (2006).

¹² The independent MMU is Potomac Economics, Ltd. Dr. Patton is the president of Potomac Economics.

¹³ *See Limited Comments of the New York Independent System Operator, Inc.*, Docket No. ER13-405-000 (filed Jan. 22, 2013).

¹⁴ Services Tariff Attachment H at §23.1.1.

¹⁵ Services Tariff Attachment O at § 30.3.3.

¹⁶ The NYISO is required to take action even where conduct does not trigger thresholds specified in the tariff for the imposition of mitigation measures, but “constitutes an abuse of market power.” *See* Services Tariff Attachment H at §23.1.2.

¹⁷ Services Tariff Attachment O at § 30.4.1.

Similarly, there is no merit to the TCR Comments' assertion that the NYISO's position in this proceeding was dictated by an alleged "controlling block"¹⁸ of stakeholders. The record in this case is perfectly clear that the NYISO's position is entirely consistent with its own independent judgment and the recommendations of its independent MMU. There also is no merit to TCR's arguments regarding fast-track processing which both ignore the clear Commission precedent cited by the NYISO,¹⁹ and are based on the false premise that the NYISO is not acting to address anti-competitive conduct.

Wherefore, the New York Independent System Operator, Inc. respectfully renews its request that the Commission deny the IPPNY Complaint and both of its alternative requests for relief in their entirety and requests that the Commission likewise deny all relief requested by the TCR Comments.

Respectfully submitted,

/s/ Ted J. Murphy

Counsel for the
New York Independent System Operator, Inc.

June 14, 2013

cc: Travis Allen
Michael A. Bardee
Gregory Berson
Anna Cochrane
Jignasa Gadani
Morris Margolis
David Morenoff
Michael McLaughlin
Daniel Nowak

¹⁸ See TCR Comments at 18 ("neither the NYISO nor its controlling block have taken action.....").

¹⁹ See *Initial Answer of New York Independent System Operator, Inc. Opposing Fast-Track Processing*, Docket No. EL13-62-000 (May 13, 2013) at 3-5; citing *Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999); *Iberdrola Renewable Resources, Inc., et. al. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011); *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999).

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 (2013).

Dated at Washington, D.C. this 14th day of June 2013.

/s/ Catherine Karimi

Catherine Karimi

Sr. Professional Assistant

Hunton & Williams LLP

2200 Pennsylvania Ave, NW

Washington, DC 20037

Tel: (202) 955-1500

Fax: (202) 778-2201

E-mail: ckarimi@hunton.com