

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

TC Ravenswood, LLC)	
)	
Complainant,)	
)	
v.)	
)	Docket No. ER10-1359-000
New York Independent System)	
Operator, Inc.)	
)	
Respondent.)	

**MOTION FOR LEAVE TO RESPOND AND RESPONSE OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. TO
ASTORIA GENERATING COMPANY, L.P., A U.S. POWER GENERATING
COMPANY**

In accordance with Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully seeks leave to respond, and responds, to the *Motion for Leave to File Answer and Answer of Astoria Generating Company, L.P.*, (“Astoria Answer”).² Astoria Generating Company, L.P., (“Astoria”) seeks a return to settlement negotiations for the purpose of exploring the new issues it proposes for this proceeding, namely the adequacy of the existing NYISO compensation scheme and the appropriate design for a *future* product - “Gas Outage Contingency Service.”³ The NYISO appreciates the attention of Astoria to

¹ 18 C.F.R. §§ 385.212 and .213 (2010)

² *Motion for Leave to File Answer and Answer of Astoria Generating Company, L.P., a U.S. Power Generating Company*, filed October 5, 2010 (“Astoria Answer”)

³ See: Astoria Answer pp. 4, 18. Although not clear from its papers, it appears that Astoria proposes the parties take up its proposal as a stand-alone issue. If developed, the proposal Astoria put forward would have to be incorporated into the NYISO’s *Market Administration and Control Area Services Tariff* (“*Services Tariff*”).

this matter. However, the NYISO respectfully recommends that, as a stand-alone issue, a proposed change to the NYISO tariffs, coming so late in this proceeding particularly when the applicant is not the sponsor, should instead be managed through the stakeholder process.⁴

Because Astoria's proposed tariff amendment is not currently before the Commission in this docket and because there is no immediate urgency in resolving the need for, or design of, this new Gas Outage Contingency Service, the Commission should not insert this stand-alone issue into this proceeding. Rather, the Commission should follow its longstanding practice to require tariff amendment proposals be presented first to stakeholders through the authorized stakeholder governance process before being submitted to the Commission.⁵

I. Motion for Leave to File and Answer

The Commission has discretion to accept answers to responsive pleadings such as answers and protests,⁶ and has often done so when it helps to clarify complex issues, provides additional information, or is otherwise helpful to the Commission's decision-making process.⁷ The NYISO response will assist the Commission because it highlights

⁴ In its filing of September 28, 2010, TCR sought a Commission decision in this docket by October 28, 2010.

⁵ See: Discussion at Section III, *infra*.

⁶ See 18 C.F.R. § 385.213(a)(2) (2009). The NYISO believes that it is submitting this answer within the time period prescribed by Rule 213(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(d). However, to the extent that the Commission deems the NYISO to have submitted this answer after the applicable deadline, the NYISO respectfully seeks permission to file this answer out-of-time.

⁷ See e.g., *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission's decision-making process); *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record.....").

the inappropriate route by which Astoria proposes to amend the NYISO tariff. The Commission should therefore exercise its discretion and accept this response but decline the relief Astoria seeks.

II. The Issues Raised by Astoria are not Germane to the Controversy Before the Commission in this Proceeding

The issues introduced by the Astoria Answer, the adequacy of Minimum Oil Burn service compensation in the NYISO's Services Tariff and the introduction of a new compensation scheme, are not currently before the Commission in this proceeding. TCR proposed a new TCR rate schedule, built around a recovery of costs that are already addressed under the NYISO Tariffs. TCR is not disputing, here, the adequacy of the NYISO's existing tariff compensation for Minimum Oil Burn service costs.⁸ The Commission's decision on the reasonableness of TCR's proposed rate schedule will not be assisted by consideration of issues surrounding the reasonableness of a new compensation scheme for a new product, particularly at this late date.

The issues Astoria raises, however, need not go unaddressed. Astoria can introduce its new product proposal in the NYISO stakeholder process, where it can be debated and voted on by all NYISO stakeholders, evaluated by the NYISO's independent Board and, if approved, through the NYISO's shared governance process, be submitted to the Commission as a NYISO Section 205 filing.

⁸ See: *Application of TC Ravenswood, LLC to implement a Minimum Oil Burn Service Cost of Service Recovery Rate Schedule*, filed May 27, 1010, p. 1. TCR explained that its application for a new rate schedule in this docket "is not designed to recover TC Ravenswood's fixed costs of providing Minimum Oil Burn Service" and that it intends to "continue to try to develop a [new] fixed cost compensation mechanism in the NYISO stakeholder process." *Id.* at p. 2.

III. A New Gas Outage Contingency Service Should Be Considered in the NYISO Stakeholder Process

While the NYISO does not believe that consideration of a new “Gas Outage Contingency Service” belongs in this docket, particularly at this stage, the NYISO does believe that Astoria’s concept should be brought to the stakeholders for discussion, further development, and possible approval. Astoria appears to be of two minds on the issue of the stakeholder process -- on the one hand unfairly blaming⁹ the NYISO for the fact that this issue has not yet been raised in the stakeholder process -- and yet, on the other, characterizing the issue as one that “does not lend well to the stakeholder process.”¹⁰ Notwithstanding Astoria’s reluctance, proposals to amend the NYISO tariffs, absent exceptional circumstances that are not present here, are to be submitted to the NYISO stakeholders before being filed at the Commission.¹¹

Indeed, in one of the cases Astoria cites for the proposition that special payments ought to be made to Generators providing what it characterizes as discrete reliability services, the Commission rejected Astoria’s application for a new rate schedule and admonished it to use the NYISO stakeholder process when seeking to amend the NYISO tariffs:

[T]he appropriate venue for Astoria to seek compensation for its Quick Start Service is through the New York Independent System Operator, Inc. (NYISO) stakeholder process.....¹²

⁹ As has previously been noted in this proceeding, neither Astoria nor TCR has ever presented a new Minimum Oil Burn compensation proposal for consideration by NYISO stakeholders.

¹⁰ See: Astoria Answer pp. 3, 16. The NYISO strongly disagrees with Astoria’s unsupported premise that generators are somehow disfavored in its stakeholder process or that certain issues are fundamentally ill-suited to stakeholder consideration. Numerous questions that directly impact stakeholders’ economic interests have been successfully resolved through the NYISO’s shared governance process.

¹¹ See Services Tariff Section 14.4; Article 19 of the *ISO Agreement*

¹² 101 FERC ¶ 61, 275 PP.1

As stated in previous proceedings, the Commission intends for ISOs to be the forum in the first instance for stakeholders to work out their differences. (citation omitted)¹³.

Moreover, there is time to explore a possible Astoria proposal through the stakeholder process. Generators are called on to provide Minimum Oil Burn service predominantly in the summer months (May through September) and it is unusual for them to do so during the winter (October through April). There is plenty of time for the stakeholders to consider and vote on a request for additional or alternatively designed compensation, for the NYISO Board to consider and decide on the matter, and for a FERC filing to become effective in May or June, 2011. The NYISO hereby commits to include an alternative Minimum Oil Burn compensation proposal on the agenda of the appropriate stakeholder group as soon as practicable after its introduction by an interested stakeholder. The NYISO stands ready to facilitate any party in making a presentation to its stakeholders on issues of interest.

The Commission should therefore follow its precedent¹⁴ and require Astoria to take its issues to the NYISO stakeholder process in the first instance rather than allowing it to circumvent that process by bringing the matter directly to the Commission.

¹³ 101 FERC ¶ 61, 275 PP. 14

¹⁴ *ISO New England*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party's specific request for relief because the Commission "will not ... circumvent that stakeholder process"); *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 at PP 54 (2009) (stating that while a proposal "may have merit" the proposal should be "presented to and discussed among ... stakeholders"); *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,209 at PP 24, 26 (2008) (declining to direct requested revisions without "giving other stakeholders an opportunity for comment" because it "would inappropriately circumvent [the] stakeholder process"); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a Commission proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants").

IV. Conclusion

For the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission exercise its discretion to: (i) accept this answer; (ii) reject the relief Astoria seeks; and (iii) encourage Astoria to pursue any potential changes to the NYISO market rules to the stakeholder process in the first instance.

Respectfully submitted,

/s/ Mollie Lampi

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Dated: October 25, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document 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 Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 25th day of October, 2010

/s/ Joy A. Zimmerlin
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