UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER15-1498-000

MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the New York Independent System Operator, Inc. ("NYISO") submits this motion for leave to answer, and answer to, the Comments of TDI US Holdings Corp.[2] ("TDI") and to one aspect of the Limited Protest of Independent Power Producers of New York, Inc.[3] ("IPPNY"). The TDI Comments and the IPPNY Protest concern the NYISO's April 13 compliance filing[4] in response to the Commission's February Order[5] adopting a competitive entry exemption under the NYISO's buyer-side capacity market power mitigation measures ("BSM Rules").[6]

The NYISO is not responding to all of the assertions in the IPPNY Protest or to the other pleadings in this proceeding. The NYISO's silence on these matters should not be construed as agreement with or acquiescence to any argument in any pleading regarding the April 13 Filing.

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[1] 18 C.F.R. §§ 385.212 and 385.213 (2009).

[2] *Comments of TDI US Holdings Corp.,* Docket No. ER15-1498-000 (May 4, 2015) ("TDI Comments").

[3] *Limited Protest of Independent Power Producers of New York, Inc.*, Docket No. ER15-1498-000 (May 4, 2015)("IPPNY Protest").

[4] New York Independent System Operator, Inc., *Compliance Filing, Request for Commission Action by May 14, 2015, and Request for Limited Waiver*, Docket No. ER15-1498-000 ("April 13 Filing").

[5] *Consolidated Edison Co. of New York Inc., v, New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,139 (2015).

[6] The BSM Rules are set forth in Section 23.4.5.7, *et seq.* of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

I. REQUEST FOR LEAVE TO ANSWER

Parties in Commission proceedings are authorized to answer pleadings styled as "comments." The Commission has discretion[7] to accept answers to protests, or to comments that it deems to be tantamount to protests, and has done so when such filings help to clarify complex issues, provide additional information, or are otherwise helpful to its decision-making process.[8] The Commission should accept the NYISO's answer in this instance because it will clarify the record and assist the Commission in its decision-making process. The NYISO therefore respectfully requests leave to answer to the extent that the Commission deems necessary.

II. ANSWER

A. The Scope of Information that the NYISO May Request Should Not Be Narrowed

The February Order specifically identified certification requirements that were "just and reasonable"[9] and not "unreasonably burdensome" and directed that these provisions be included in the April 13 filing.[10] One of these requirements is reflected in proposed Section 23.4.5.7.9.2.2 which states that the parents or Affiliates of a project shall provide any information or cooperation requested by the NYISO. This requirement is also reflected in Paragraph 11 of the NYISO's proposed certification form.[11]

TDI argues that the proposed tariff language is "overbroad" and could result in the NYISO seeking information "regarding matters that the Commission has determined are outside

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[7] *See* 18 C.F.R. § 385.213(a)(2).

[8] *See, e.g., 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).

[9] Order at P 79.

[10] Order at P 80.

[11] *See* NYISO Answer at Attachment 3, proposed Section 23.4.5.7.8.2.2, and April 13 Filing at Attachment II, proposed Section 23.4.5.7.9.2.2.

of the scope of, or are not germane to, a Competitive Entry Exemption determination."[12] TDI proposes to limit the NYISO to seeking information and cooperation that is "relevant" to an exemption request. Specifically, it would revise Paragraph 11 to expressly confine the NYISO to seeking information or cooperation "in connection with" an exemption request from an applicant's parents or affiliates.[13]

TDI's proposal should be rejected. It appears to be based on groundless concerns that the NYISO would seek to obtain information that the February Order indicated should not be required of parents and Affiliates when it is rejecting certain parties' proposals.[14] The Commission should not accept TDI's unsupported premise that the NYISO would act contrary to its directives. In addition, the NYISO's purpose and mission are already clearly delineated and limited by its governing documents, *e.g.,* by Article 3 of the ISO/TO Agreement and Article 6 of the ISO Agreement. Given these limits, there is no reason to think that the NYISO would seek information that was not relevant to a project or its qualification for the competitive entry exemption.

At the same time, adopting TDI's proposed tariff revision could complicate and delay the NYISO's ability to administer the competitive entry exemption. It could enhance an applicant's parent's or affiliate's ability to resist sharing material information relevant to the NYISO's analysis of the project and its eligibility for a competitive entry exemption by claiming that it was not sufficiently "connected with" a project's exemption request. This possibility makes its unreasonable (as well as unnecessary) to add TDI's proposed "in connection with" language to Paragraph 11. This is true even though such language has been included in proposed Paragraph

[12] TDI Comments at 3.

[13] TDI Comments at 4.

[14] TDI Comments at 3.

10 of the certification form. Paragraph 10 applies directly to projects. Likewise, all of the other BSM Rule provisions regarding the submission of data apply to the project as an Examined Facility. In addition, as described above, the April 13 Filing utilized language accepted and directed by the February Order.

B. The NYISO's Ability to Require Applicants to Resubmit Certifications Should Not Be Restricted

As required by the February Order,[15] the April 13 Filing included the following proposed language in Section 23.4.5.7.9.2.4:

> certifications shall be submitted concurrent with the request for a Competitive Entry Exemption and each time the ISO requests a resubmittal of a certification, until the Generator's or UDR project's Entry Date.

TDI claims that the NYISO's ability to request resubmittals should be restricted to situations where the NYISO "reasonably believes that there have been material changes to the facts and representations" contained in a previously submitted certification.[16] TDI makes this proposal even though it acknowledges that the NYISO will "likely" act reasonably when it implements this provision. Even if TDI had not made this admission there would be no reason, and it would be inappropriate, to restrict the NYISO's ability to require resubmittals. Exemption applicants should not be empowered to obstruct mitigation analyses by requiring the NYISO to demonstrate, potentially through litigation, that it "reasonably believes" that "material" changes have occurred. There is no reason to suspect that the NYISO's request for resubmittals would be vexatious or overly burdensome. The Commission should therefore not require it to spend time and resources proving its need for information. Moreover, it would not be reasonable to establish a threshold that must be satisfied before the NYISO can request information. This is

[15] Order at P 53.

[16] TDI Comments at 4.

particularly true in the context of BSM Rule determinations because project development plans change and information regarding the project evolves, including from the date a project requests a competitive entry exemption through the date it enters. It therefore would be unreasonable for the NYISO to be limited to requesting an update to when it has a "reasonable belief" that there has been a material change. Imposing such a requirement could hinder the NYISO's administration of the competitive entry exemption. Waiting until there is sufficient evidence for a "reasonable belief" of a material change could delay the NYISO's action on any activity that might cause an Examined Facility to be ineligible for a competitive entry exemption or result in a determination being revoked. Such delay could affect the decisions of other Examined Facilities in the Class Year and other Market Participants. [17]

C. The NYISO's Proposed Revocation Procedures Should Not Be Weakened

In compliance with the February Order, the April 13 Filing included language specifying that the submission of false, misleading, or inaccurate information in connection with a competitive entry exemption request would constitute a violation of the Services Tariff and be referred to the Commission. It also included proposed revocation procedures under which a competitive entry exemption granted to a project could be revoked if the NYISO "reasonably believed" that it were granted based on false, misleading, or inaccurate information.[18]

TDI claims that the proposed language unreasonably creates a "strict liability" standard and that revocations should only result from "intentional and material misrepresentations." This proposal should be rejected. "Intent" language should not be accepted because if an exemption is granted based on false premises then the project never truly was eligible for the exemption

[17] In addition, TDI's request appears to be an impermissible collateral attack on the February Order which directed the NYISO to adopt the very language that TDI now seeks to change.

[18] *See* proposed Section 23.4.5.7.9.5.2.

regardless of whether the information was submitted intentionally. Moreover, it does not seem plausible that a project exercising due diligence would truly be unaware of information regarding non-qualifying contractual relationships that would make it ineligible for a competitive entry exemption. Such information should be known, or readily ascertainable, by most, if not all, project developers. In any event, due to the potential impact on the decisions of other developers and Market Participants, the language set forth in the April 13 Filing is reasonable and appropriate.

In addition, the language that TDI is challenging was accepted by the February Order which rejected a NYISO proposal to include a penalty provision in the Services Tariff in favor of revocation procedures but did not alter language that would trigger revocation based on the submission of false or misleading information.[19] The February Order did not add additional intent or materiality requirements to the triggering provision and it is beyond the scope of a compliance proceeding for TDI to propose such changes now.[20] The fact that the PJM Interconnection, LLC's tariff contains different language than the NYISO's does not authorize TDI to impose that language in New York.[21]

[19] Order at P 90 ("it is appropriate for NYISO to have a mechanism to remedy the submission of false, misleading, or inaccurate information internally before making a referral to the Commission.")

[20] As was noted above in [n. 17] it is also arguably a collateral attack on the February Order for TDI to make this claim now.

[21] *See, e.g.,* February Order at P 47 ("As the Commission has stated many times before, we allow for each region to develop rules to address the differing concerns of the regions.")

D. Revision to Section 23.4.5.7 Regarding Timing of Application of an Offer Floor After Revocation of Competitive Entry Exemption

The April 13 Filing proposed the following revision to Section 23.4.5.7, which clarifies when an Offer Floor will be applied to a project if the NYISO revokes its competitive entry exemption:[22]

> Offer Floors applied pursuant to Section 23.4.5.7.9.5.2 shall apply to offers for Unforced Capacity from an Installed Capacity Supplier starting with all ICAP auction activity subsequent to the date of the revocation.

The IPPNY Protest raised a concern that this language could "be read to permit forward sales for future months made prior to revocation to stand, which is contrary to the findings of the" Order. IPPNY proposed a modification to this language that it asserts is "required to reflect determinations" made in the Order:[23]

> Subsequent to the date of the revocation, Unforced Capacity from an Installed Capacity Supplier shall participate subject to Offer Floors applied pursuant to Section 23.4.5.7.9.5.2.

This language is not in fact required to "reflect" the Commission's determinations. The first sentence of Section 23.4.5.7 explicitly states that, unless exempt, "offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier: (i) shall equal or exceed the applicable Offer Floor; and (ii) *can only be offered in the ICAP Spot Market Auctions.*" (emphasis added) Thus, the capacity from any project that is subject to an Offer Floor cannot be certified against (*i.e.*, used to satisfy) a Capability Period or Monthly Auction sales or Bilateral Transactions. The NYISO's proposed revision to Section 23.4.5.7 does not create an exception that would allow a project whose competitive entry exemption was revoked pursuant to Section 23.4.5.7.9.5.2 to sell its capacity pursuant to a transaction outside of the Spot Market. Thus the

[22] April 13 Filing at 10 and Attachment II.

[23] IPPNY Protest at 8.

April 13 Filing's proposed language complies with the Order, and the Commission need not adopt IPPNY's proposed modification.

III. CONCLUSION

WHEREFORE, the NYISO respectfully requests that the Commission accept this Answer and reject the proposed tariff changes discussed herein.

Respectfully submitted,

/s/ Gloria Kavanah
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Dated: May 13, 2015

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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 13th day of May, 2015.

/s/ Mohsana Akter

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