UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	**)** **)**	**Docket No. ER14-500-000**

REQUEST FOR LEAVE TO SUBMIT LIMITED ANSWER AND LIMITED ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 213 of the Commission's Rules of Practice and Procedure,[1] the NYISO respectfully submits this request for leave to submit this limited answer, and its limited answer, to the various answers filed by the Supply Interests[2] and to the *Request for Evidentiary Hearing* submitted by TC Ravenswood, LLC ("Ravenswood Request").

I. REQUEST FOR LEAVE TO FILE ANSWER

The NYISO recognizes that the Commission discourages multiple rounds of responsive pleadings but requests leave to submit this brief response to address two very substantial mischaracterizations made by the Supply Interests and in the Ravenswood Request. Accepting this limited answer will help to clarify the record before the Commission.

II. ANSWER

The Supply Interests assert that the NYISO's January 9 Answer should be rejected, treated as a substantive amendment to the NYISO's November Filing, and/or trigger trial-type

[1] 18 C.F.R. § 385.213 (2012).

[2] These answers were filed on January 15 and 17. As the NYISO noted in its January 9, 2014 *Request for Leave to Answer and Answer in this Proceeding* ("January 9 Answer"), the Supply Interests are the Independent Power Producers of New York, Entergy Nuclear Power Marketing, LLC, Astoria Generating Company, L.P. and the NRG Companies (together, the "Indicated Suppliers"); TC Ravenswood, LLC ("Ravenswood"), the Electric Power Supply Association, and the New York Supplier and Environmental Advocacy Group ("NY-SEA").

evidentiary hearings simply because of its length.[3] These claims are all based on the false premise that the November Filing was somehow deficient and that the NYISO waited until the January 9 Answer to provide evidence to support its proposed Installed Capacity ("ICAP") Demand Curves. The November Filing provided more than adequate evidence to establish the justness and reasonableness of its proposals. The additional material included in the January 9 Answer was provided solely to respond to the various protests of the Supply Interests (and other parties). It is, at a minimum, disingenuous for the Supply Interests to complain that the NYISO's direct responses to issues raised in their protests were too thorough or unfairly complete.

Second, the Ravenswood Request asserts that there are numerous issues of disputed material fact in this proceeding and that the Commission must therefore initiate trial-type hearing proceedings.[4] As the January 9 Answer noted, however, Commission precedent is clear that trial-type procedures are only needed when disputed issues cannot be resolved on the basis of the written record.[5] This is normally not the case when disputed issues are technical in nature and when witness motive, intent, and credibility are not at issue.[6]

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[3] *See e.g.,* Ravenswood Request at 3 and *Motion for Leave to Answer and Answer of the New York Supplier and Environmental Advocate Group Regarding NYISO Proposed Installed Capacity Demand Curves* at 15 (Jan. 17, 2104) (the "NY-SEA Answer") (making the specious assertion that "the introduction of such a significant amount of new information is a clear indication that there are genuine issues of material fact").

[4] The Indicated Suppliers and NY-SEA also renew earlier requests by the Supply Interests for an evidentiary hearing but do so at far less length than the Ravenswood Request. The Indicated Suppliers claim that an evidentiary hearing is necessary to determine if the Siemens F Class Turbine is capable of meeting the Con Edison 45 second auto-swap requirement. But they fail to provide any technical basis for their assertion that this turbine cannot be modified as was provided in the affidavits submitted by the NYISO and the New York Transmission Owners (Thompson Aff., ¶¶ 16-17).

[5] January 9 Answer at 55-56.

[6] *See, e.g. Iroquois Gas Transmission System, L.P.*, 53 FERC ¶61,194 at 61,685 (1990); *Louisiana Ass'n of Indep. Producers & Royalty Owners v. FERC*, 958 F.2d 1101, 1113 (D.C. Cir. 1992); *Union Pac. Fuels v. FERC*, 129 F.3d 157, 164 (D.C. Cir. 1997).

Ravenswood claims that the issues in this proceeding cannot be resolved based on the written record "given that the record reflects testimony by numerous individuals that reach opposite conclusions ..... "[7] Ravenswood is thus asking the Commission to accept the specious position that a dispute cannot be resolved without a hearing so long as the parties disagree.

Ravenswood also begs the question by asserting, without any justification, that there should be "a trial-type evidentiary hearing where further evidence can be developed and the analyses presented and credibility of witnesses can be fully vetted to provide the most fulsome record "[8] Ravenswood offers a list of proposed hearing issues,[9] but fails to explain why any of them cannot be resolved based on the record, and instead simply recites the parties' positions. That Ravenswood has devised a lengthy list is hardly dispositive as the Commission has held that trial-type procedures are not required simply because disputed issues are numerous or complex.[10] The issues in this proceeding are technical, have nothing to do with witness motive, intent, or credibility, and are well-suited to direct resolution by the Commission. The record is more fully developed than in prior ICAP Demand Curve reset cases and provides the Commission with a clear basis to either accept the November Filing's proposals or require adjustments through a compliance filing without further proceedings.

[7] Ravenswood Request at 2 and 8 (referencing "multiple witnesses who reach opposite conclusions").

[8] Ravenswood Request at 3.

[9] Ravenswood Request at 9-26.

[10] *See, e.g., Ameren Services Co. et. al.*, 131 FERC ¶ 61,214 at P 10 (2010) ("[Financial Marketers] sole objection is that the number and complexity of the factual issues involved makes a trialtype hearing necessary; yet they do not explain why the number and complexity of the issues presented, without more, makes paper hearing procedures inappropriate.")

The Commission has consistently refrained from using trial-type hearing procedures in prior NYISO ICAP Demand Curve resets,[11] other major NYISO capacity market cases,[12] and many other capacity market proceedings involving other ISOs/RTOs.[13] The Ravenswood Request points to a single case in which the Commission turned to such procedures, but the NYISO respectfully submits that it should instead follow the greater body of its precedents here. Among numerous other considerations, the proceeding cited by Ravenswood lasted an entire year before ending in a settlement. Resorting to trial-type procedures would thus almost certainly begin a long period of uncertainty over the level of the ICAP Demand Curves that would be harmful to the NYISO's capacity markets, including the implementation of the G-J Locality.[14] It would also needlessly consume the Commission's and the parties' time and resources litigating issues that are already ripe for determination.[15] The Commission should

[11] *See New York Independent System Operator, Inc.,* 111 FERC ¶ 61,117 at P 1 (2005); *New York Independent System Operator, Inc.,* 122 FERC ¶ 61,064 at P 1 (2008); *New York Independent System Operator, Inc.,* 134 FERC ¶ 61,058 at P 167 (2011) and 136 FERC ¶ 61,192 at P 2 (2011).

[12] *See, e.g. Astoria Generating Company LP v. New York Independent System Operator, Inc,* 139 FERC ¶ 61,244 (2012) *and Hudson Transmission Partners, LLC v. New York Independent System Operator, Inc*., 145 FERC ¶ 61,156 (2013).

[13] *See, e.g., PJM Interconnection, L.L.C*., 135 FERC ¶ 61,022 at P 22 (2011) *and ISO New England, Inc. and New England Power Pool Participants Committee*, 131 FERC ¶ 61,065 at P 1 (2010).

[14] A delay in the implementation of the ICAP Demand Curves would have a substantial and deleterious effect on the NYISO's markets. For example, as the NYISO has explained and the Commission has acknowledged, "establishing and implementing the G-J Locality for the May 1, 2014 start of the 2014/2015 Capacity Year is necessary to send more efficient price signals, enhance reliability, mitigate potential transmission security issues, and serve the long-term interest of all consumers in New York State." *New York Independent System Operator, Inc.,* 144 FERC ¶ 61,126 PP 6, 24 (2013). Setting this proceeding for hearing would at a minimum, seriously jeopardize, the NYISO's ability to achieve these objectives.

[15] The Commission has previously declined to initiate trial-type hearing procedures in complex and high profile capacity-market disputes when there was no deficiency in the record and it was "not persuaded that the delay, uncertainty, and administrative expense associated with additional litigation would be outweighed by any other countervailing considerations." *PJM Interconnection, L.L.C., et. al.,* 135 FERC ¶ 61,022 at P 25 (2011). It should follow this precedent here.

instead exercise its well-established legal authority[16] to decide the issues in this proceeding based on the fully-developed record before it.

Respectfully Submitted,

/s/Ted J. Murphy
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[16] *See, e.g. Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1119 (D.C. Cir. 2002) (holding that the Commission "may properly deny an evidentiary hearing if the issues, even disputed issues, may be adequately resolved on the written record, at least where there is no issue of motive, intent, or credibility"); *Louisiana Ass'n of Independent Producers & Royalty Owners v. FERC*, 958 F.2d 1101, 1113 (D.C. Cir. 1992) (finding that, as the court had not been shown "any issue of "motive, intent, credibility … or past occurrence, that would require the Commission to hold a hearing rather than decide the case on the basis of the paper record, [the court] cannot quarrel with the Commission's conclusion that none was required"); *and Texaco Inc. v. FERC*, 148 F.3d 1091, 1100 (D.C. Cir. 1998).