

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

<b>ISO New England, Inc. and</b>	)	
<b>New England Power Pool Participants’</b>	)	<b>Docket No. ER16-2451-000</b>
<b>Committee</b>	)	

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

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure ,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) submits this request for leave to answer, and its limited answer to, the *Motion for Leave to Intervene Out-of-Time and for Leave to Answer and Answer of the Independent Power Producers of New York, Inc. and the New England Power Generators Association* (“IPPNY Answer”), the *Answer of Roseton Generating LLC to New York ISO Request for Relief* (“Roseton Answer”), the *Answer and Motion for Leave to Answer of the NRG Companies* (“NRG Answer”), and the *Motion for Leave to Answer and Answer of the New England Power Pool Participants Committee* (“NEPOOL Answer”) (collectively the “Answers”).

**I. Motion for Leave to Answer**

The Commission has the discretion<sup>2</sup> to accept responses to answers and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful in the Commission’s decision-making process.<sup>3</sup> The Commission should accept the NYISO’s

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2010).

<sup>2</sup> See 18 C.F.R. § 385.213(a)(2).

<sup>3</sup> See *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has “assisted us in our decision-making process.”); *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 12 (2008) (accepting “PJM’s and FPL’s answers [to rehearing requests], because

answer in this instance. This pleading has been narrowly drawn so that it is limited to correcting the Answers' mischaracterizations regarding: (i) the progress the NYISO has made to date towards resolving the concerns raised by its September 9, 2016 *Motion to Intervene and Limited Protest* ("September 9 Filing"); and (ii) legal and economic principles. This pleading will thus help the Commission to better understand a complex inter-regional issue that could have major uneconomic price impacts on New York consumers. Accordingly, the NYISO respectfully requests that the Commission allow this limited answer.

## **II. ANSWER**

As described in detail in the September 9 Filing, the NYISO is seeking a brief deferral of one element of New England's proposed Forward Capacity Market Enhancements ("FCM Enhancements"). The deferral would avoid the potential for material pricing inefficiencies that could unnecessarily increase costs for New York consumers by hundreds of millions of dollars. Specifically, the NYISO has requested a delay in the implementation of proposed revisions to ISO New England, Inc.'s ("ISO-NE") Reconfiguration Auction and Capacity Supply Obligation Bilateral qualification requirements that would apply to "Import Capacity Resources" located in constrained areas ("Localities") in the New York Control Area ("NYCA") (the "RA Import Proposal"). Under the NYISO's request, the proposed revisions would first apply to such resources for capacity commitments beginning June 1, 2018. The September 9 Filing also explained that although the NYISO was working diligently with its stakeholders to develop

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they have provided information that assisted us in our decision-making process"); *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); *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. . .").

NYISO market rule changes that would address New England's proposed rule changes from harming New York consumers, the requested deferral was nevertheless necessary.

The Answers claim, among other things,<sup>4</sup> that there is no need for the NYISO's requested relief because the NYISO is supposedly already on the verge of adopting rule changes in New York that would prevent the material pricing inefficiencies.<sup>5</sup> Some of the Answers also assert that the NYISO's requested relief is inconsistent with the Federal Power Act or with the efficient operation of the markets.<sup>6</sup> As explained below, both contentions are misleading and inaccurate. The Commission should not be swayed by them but should instead grant the relief sought by the September 9 Filing.

**A. The Answers Overstate the Progress that the NYISO and its Stakeholders Have Made Towards Resolving the Issues Raised by the September 9 Filing**

The Answers suggest that the NYISO is close to implementing capacity market pricing rule changes that would prevent the proposed adjustments to ISO-NE's qualification requirements from triggering material pricing inefficiencies in New York. The Answers are correct that the NYISO has commenced a stakeholder process, is exploring possible rule changes with stakeholders, and has recently discussed potential tariff language with them. Nevertheless, it is misleading for the Answers to imply that the NYISO and its stakeholders have made so much progress that the need for the temporary deferral requested by the September 9 Filing has somehow been obviated. The Answers understate the complexity of the relevant issues. They also overstate the likelihood of being able to fully address the issues that have been raised.

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<sup>4</sup> The fact that the NYISO is not responding to other assertions and arguments made in the Answers out of deference for the Commission's procedural rules should not be construed as agreement with or acceptance of them.

<sup>5</sup> See IPPNY Answer at 6; Roseton Answer at 9.

<sup>6</sup> See, e.g., IPPNY Answer at 5; NEPOOL Answer at 5.

Given the magnitude of the potential adverse impacts on New York stakeholders, it is critically important that the NYISO be afforded additional time to develop a fully vetted proposal.

The September 9 Filing emphasized that the NYISO “is in the *early stages* of formulating a proposal” to revise its Market Administration and Control Area Services Tariff (“Services Tariff”), but the “issue is extremely complex” and “an appropriate solution must address a range of issues, which include capacity market design changes, the calculation of capacity market requirements, generator obligations, New York State Reliability Council . . . requirements, NYISO software requirements, and related timing issues.”<sup>7</sup> The purpose of the NYISO stakeholder process is to identify and discuss the numerous complex questions associated with the issues, consider various options to address them, weigh potential implications, and, ultimately, help the NYISO to propose a fully vetted solution. The stakeholder discussions to date have highlighted the difficulties of addressing these matters in such an accelerated timeframe. Progress is being made but a comprehensive and permanent solution is not expected in the near term.

The Answers also overlook that the NYISO’s shared governance system requires supermajority stakeholder support before the NYISO may file tariff revisions under Section 205 of the Federal Power Act. As the September 9 Filing noted, achieving the requisite stakeholder approval to authorize a Section 205 filing is far from certain at this time. Indeed, the NYISO’s Installed Capacity Working Group met at the end of last week (*i.e.*, October 7, 2016), and there was no clear consensus on how to revise the capacity market rules in order to address the issues presented by the RA Import Proposal.<sup>8</sup> It is clear to the NYISO, however, that more time is

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<sup>7</sup> September 9 Filing at 3 (emphasis added).

<sup>8</sup> For example, certain Transmission Owners described their own proposal which materially adjusted a number of the key elements of the proposal the NYISO has been developing.

needed to consider the issues and the options for addressing them. Moreover, the NYISO believes that most New York stakeholders share its view.

Moreover, the draft Services Tariff revisions that the NYISO has presented to stakeholders represent a first attempt at what the September 9 Filing described as a potential “immediate fix” that might proceed for further review if the Commission were to deny the NYISO’s requested relief. That is, the proposed tariff revisions would be implementable for the NYISO’s 2017/2018 Capacity Period but would not necessarily be based on full consideration of options or be comprehensively vetted. As outlined above, the importance of full consideration and vetting is based on the magnitude of the potential uneconomic dollar impact on New York consumers from the RA Import Proposal, and the inaccurate market price signals associated with the clearing prices. The NYISO wants to ensure that its solution addresses the impacts to New York consumers and does not result in any unforeseen adverse consequences. Accordingly, the fact that the NYISO is in the process of developing potential rule changes that might ameliorate pricing inefficiencies if the requested deferral were denied does not mean that the deferral is unneeded.

Finally, even if the NYISO is able to file tariff revisions to propose some form of “immediate fix,” it is likely that they would be controversial in part because they will have been developed hastily without an adequate opportunity to garner stakeholder consensus. Thus, there would probably be more litigation before the Commission than there would be if the deferral were granted and the NYISO and its stakeholders were afforded more time to develop a comprehensive solution. Granting the requested deferral is therefore more likely to result in a complete solution that reflects a thorough evaluation and, after consideration of reasonable alternatives, is more likely to preserve the parties’ and the Commission’s resources.

In short, it is inaccurate for the Answers to claim that the progress made in the NYISO stakeholder process to date has somehow mooted the September 9 Filing's request for relief.

**B. Certain Answers Make Inaccurate Claims Regarding the Purpose and Legality of the NYISO's Requested Deferral**

**1. The Requested Deferral is Consistent with Open and Efficient Competitive Markets**

The IPPNY Answer claims that the NYISO's requested limited and temporary deferral "is contrary to open and efficient competitive markets" because it is supposedly aimed at "unfairly preventing the sale of capacity from a lower cost region to a higher cost region when transfer capability is otherwise available for such transaction."<sup>9</sup> This is inaccurate. The NYISO is not seeking to preclude the efficient operation of the markets and efficient transactions in them. The September 9 Filing was clear that the NYISO was seeking a temporary deferral solely to avoid material pricing inefficiencies in New York. Those inefficiencies could unnecessarily increase costs paid by New York consumers by hundreds of millions of dollars. The September 9 filing explained that this potential harm to New York consumers greatly outweighs the potential impact to other market participants of the proposed temporary deferral. Thus, it is IPPNY's proposal to do nothing, not the NYISO's requested relief, that would have the Commission inappropriately allow inefficient market outcomes. IPPNY's position has no merit and should be rejected.

**2. The Commission Has the Authority to Grant the Requested Deferral**

IPPNY and other parties<sup>10</sup> also claim that the Commission may not grant relief because the NYISO has not argued that there is a flaw in the FCM Enhancements as applied to New England but has instead only warned that they will cause substantial harm in New York. They

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<sup>9</sup> IPPNY Answer at 5.

<sup>10</sup> See n.5 *supra*.

also note that the material pricing inefficiencies that would result in New York are a function of a flaw in the NYISO's rules, not ISO-NE's. At the same time, they wholly fail to acknowledge the obvious and essential point that the implementation of ISO-NE's proposed rule change is the very thing that would trigger the flaw in New York.<sup>11</sup> There is no basis in the Federal Power Act or Commission precedent for such a narrow reading of the Commission's authority. The Commission may, and should, act in this proceeding to protect consumers in New York from the harm that may result if the relief requested by the September 9 Filing is not granted.

### **3. Existing NYISO Rules Do Not Obviate the Need for the Requested Deferral**

The Roseton Answer argues erroneously that the NYISO's Installed Capacity supplier-side (Pivotal Supplier) market power mitigation rules are somehow contrary to the September 9 Filing's request for relief. Specifically, Roseton cites to the provisions in Attachment H of the Services Tariff governing determinations of whether capacity exports are economic – for the purpose of determining whether a supplier of Mitigated UCAP is engaging in withholding – to argue that the “NYISO has no expectation that generators in a Locality will not export their capacity.”<sup>12</sup> Roseton also appears to suggest that the penalty provisions for uneconomic withholding are sufficient to address the market rule inefficiencies highlighted by the NYISO's September 9 Filing. These assertions are different than addressing the market clearing price problem. However, the Roseton Answer's assertion highlights the need for additional time to address the complex issues.

As the September 9 Filing explained, material pricing inefficiencies could occur under the NYISO's current capacity market design because a generator exporting capacity from a

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<sup>11</sup> Similarly, as discussed above, it is irrelevant for the Answers to point out that harm to New York consumers can only be permanently avoided by making changes to New York's rules because those changes will require more time than will be available without the NYISO's requested deferral.

<sup>12</sup> Roseton Answer at 20.

Locality is viewed in the auctions as though it no longer exists in the Locality. This means that it is not properly reflected in the NYISO's capacity market-clearing prices, causing them to inefficiently rise, which cascades the price impact on consumers by also sending inaccurate signals for new investment in capacity. The supplier-side market power mitigation provisions cited by Roseton do not address this inefficiency in the auction clearing prices.

Further, the Market Monitoring Unit for the NYISO has indicated that the \$2.00/kW-month "impact threshold" for exports under the supplier-side rules for determining withholding is significantly greater than the impact thresholds for other types of withholding, and may need to be revisited. The NYISO described at its September 7, 2016 Installed Capacity Working Group meeting that it could not adequately consider the issues surrounding this issue in the limited timeframe to make a filing in time for the 2017/2018 Capability Year. Therefore, Roseton's assertion that the current supplier-side rule for exports is unfounded and highlights the need for a deferral so that the NYISO and its stakeholders can consider the export impact threshold in the mitigation rules.

### **III. CONCLUSION**

For the reasons specified above, the NYISO respectfully requests that the Commission accept this answer, reject the relief sought by the Answers, and grant the NYISO's pending request in this proceeding for a limited delay in the implementation of the proposed RA qualification requirements with respect to generators in NYCA Localities.

Respectfully Submitted,

/s/ Ted J. Murphy  
Counsel to the  
New York Independent System Operator, Inc.



## **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 12<sup>th</sup> day of October 2016.

/s/ Joy A. Zimmerlin

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