

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

Cricket Valley Energy Center LLC and)	
Empire Generating Center, LLC)	
)	
Complainants)	Docket No. EL21-7-000
)	
v.)	
)	
New York Independent System Operator, Inc.)	
)	
Respondent)	

**MOTION OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
FOR EXTENSION OF TIME TO ANSWER COMPLAINT**

In accordance with Rules 212 and 2008 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully requests additional time to answer the *Complaint and Request for Fast Track Processing* filed by Cricket Valley Energy Center LLC and Empire Generating Company, LLC (“Complainants”) in the above-captioned docket (“Complaint”). The Commission issued a notice on October 15, 2020, establishing a November 3, 2020 deadline for answering the Complaint. The NYISO respectfully requests a brief extension of 15 days, until November 18, 2020, for itself and other interested parties to answer, or to file other responses to, the Complaint.² The NYISO also respectfully requests that the Commission: (i) adopt the standard five day answer period

¹ 18 C.F.R. §§ 385.212 and 385.2008.

² Complainants have informed the NYISO that they would not consent to this requested extension.

applicable to motions for extensions of time;³ and (ii) issue an order granting the requested extension as soon as possible after the end of the five day answer period.

The NYISO respectfully submits that there is good cause to grant a 15-day extension of time. Simply stated, the Complaint seeks to radically expand the scope of the NYISO's buyer-side capacity market mitigation measures (the "BSM Rules") and to alter their fundamental nature. Its requested relief would substantially impact all potential and existing sellers and buyers of capacity in the NYISO-administered capacity markets. The Complaint also asks the Commission to sweep away more than a decade of precedent regarding the scope of the BSM Rules and long-established exemptions under them. The Complaint would overturn an even longer line of precedent recognizing that different regions may adopt different market rules that reflect regional differences⁴ by transplanting to New York a mitigation scheme that was developed over several years in the PJM Interconnection ("PJM") region. Adding further significance, the Complaint seeks this relief at a time when the New York State Public Service Commission already has a proceeding underway⁵ to explore options to modify or end the use of

³ See 18 C.F.R. § 385.213(d)(1)(i).

⁴ See, e.g., *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 (2020) at n. 39 (upholding the existence of the NYISO's "Renewable Exemption" under the BSM Rules and emphasizing that "the Commission has explained that "regional markets are not required to have the same rules. Our determination about what rules may be just and reasonable for a particular market depends on the relevant facts.") Citing 169 FERC ¶ 61,239 at P 204 n.431; 153 FERC ¶ 61,022 at P 38 (stating that "[w]hether the Commission has found certain exemptions from buyer-side market power mitigation in . . . any other region to be just and reasonable is not dispositive of whether the Commission should find NYISO's buyer-side market power mitigation rules to be unjust and unreasonable absent similar exemptions"); *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139, at P 47 (citations omitted) ("As the Commission has stated many times before, we allow for each region to develop rules to address the differing concerns of the regions."), *order on clarification, reh'g, & compliance*, 152 FERC ¶ 61,110 (2015).

⁵ See, e.g., N.Y. State Pub. Serv. Comm'n, Case 19-E-0530, *Order Instituting Proceeding and Soliciting Comments* (Aug. 8, 2019), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b1D25F4BE-9A05-463F-A953-790D36E318BC%7d>.

the existing capacity markets administered by the NYISO to provide for resource adequacy, in substantial part because of concerns related to the BSM Rules' impact on state clean energy mandates.

In short, the significance of the issues raised by the Complaint and the financial stakes for market participants could not be greater. The NYISO intends to consult with its independent Market Monitoring Unit and to prepare a robust answer that will raise multiple factual and legal objections to the Complaint. There is no question that New York State, numerous NYISO stakeholders, and other interested parties will do the same. It is imperative that the Commission allow the NYISO and other parties a reasonable time to address the Complaint so that there will be a complete and well-developed record for the Commission to consider.

The NYISO respectfully submits that the Commission's standard 20-day period for responding to complaints will not be sufficient given the unusually great significance and complexity of the issues presented by the Complaint. The Commission has frequently granted much longer extensions for answers in complaint proceedings that addressed matters of comparable importance.⁶ It should do so here.

⁶ For example, in Docket No. EL15-64-000, the Commission granted the Independent Power Producers of New York an additional 30 days to answer a complaint proposing to create several new exemptions under the BSM Rules. That complaint sought significant changes, but the total overhaul of the BSM Rules that Complainants pursue in this proceeding would be far more extensive. Similarly, in Docket No. EL18-177 the California Independent System Operator ("CAISO") was granted an additional 45 days to answer a complaint demanding that it implement a centralized capacity market. That request was comparable in scope to the far-reaching changes Complainants' request here. Much like the NYISO, the CAISO explained in that proceeding that it needed more time to answer "due to the scope, nature, and number of the allegations in the Complaint and the press of other matters, including commitments and obligations arising from regulatory proceedings and stakeholder processes pertaining to resource adequacy reform and flexible capacity needs." *Motion of the California Independent System Operator Corporation for an Extension of Time to Answer Complaint*, Docket No. EL18-177 at 2 (June 22, 2018). The NYISO acknowledges that these two extension requests were unopposed. But both requests also sought substantially longer extensions than the 15 days that the NYISO is asking for.

Moreover, the NYISO staff with subject matter expertise relevant to answering the Complaint are already heavily engaged in other critically important and resource-intensive high priority tasks. In particular, as the NYISO has previously noted when obtaining extensions of compliance filing deadlines, the NYISO is in the midst of making determinations under the BSM Rules for the unprecedentedly large number of new entrants in Class Year 2019.⁷ The NYISO must also complete its second Expedited Deliverability Study, which began in August and is expected to come to a close at the end of 2020 or early in 2021. Completing the Class Year 2019 process, and related Expedited Deliverability Studies, in a timely manner is a major priority for the NYISO and stakeholders. The NYISO is also working to complete the quadrennial ICAP Demand Curve reset process. That effort is scheduled to culminate in the submission of proposed new ICAP Demand Curves for the 2021-2025 Capability Years by November 30, 2020.⁸ Given these and other obligations it would be unreasonably burdensome to require the NYISO to answer the Complaint in just 20 days. Granting the brief extension requested by the NYISO would significantly reduce this concern.

Moreover, it would be inequitable to compel the NYISO and other interested parties to respond in 20 days when the Complainants could have filed the Complaint at any time in the last seven-plus months.⁹ The Commission issued high profile orders in February 2020 that declined

⁷ See, e.g., New York Independent System Operator, Inc., *Request for Additional Extension of Time to Submit Compliance Filing Addressing Self-Supply Exemption of the New York Independent System Operator, Inc.*, New York Independent System Operator, Inc., Docket No. ER16-1404-004, filed September 11, 2020. The Commission granted the NYISO an extension until December 21, 2020 for the NYISO to file revised rules governing the Commission-approved Self-Supply Exemption, which will itself be a substantial undertaking.

⁸ See NYISO Market Administration and Control Area Services Tariff Section 5.14.1.2.2.4.11.

⁹ Alternatively, the Complainants could have proposed changes to the BSM Rules through the NYISO stakeholder process. The NYISO is currently conducting a comprehensive review, known as the “CMR” process, of the BSM Rules in light of evolving Commission and New York State policies and mandates. To the best of the NYISO’s knowledge, Complainants made no attempt to raise their issues through the ongoing CMR process.

to expand the scope of the BSM Rules or eliminate the Renewable Exemption in the NYISO.¹⁰ At that time, it should have been clear to Complainants that there was no immediate prospect of the Commission imposing PJM's mitigation rules on New York unless a third party asked it to do so. No matter what individual financial hardships the Complainants claim to be facing they cannot justify denying the NYISO and other interested parties a reasonable extension of time to respond to a Complaint when they could have mitigated their claimed hardships by filing the Complaint sooner. Furthermore, the NYISO's requested 15-day extension would not prejudice Complainants. There will still be ample time after November 18, 2020 for the Commission, if it so chooses, to issue an order by December 31, 2020 as Complainants have requested.

Finally, the NYISO would note that Complainants' request for "fast track processing" is inappropriate given the Commission's clear past interpretation of those procedures.¹¹ The issues in this proceeding are far too numerous, complex, and important for those rules to be applied. Of course, it is ultimately for the Commission to decide how quickly it wishes to act on the Complaint. However, Complainants' attempt to invoke fast track processing, and the fact that they have not asked for an abbreviated answer period, should not dissuade the Commission from granting the NYISO's requested extension.

¹⁰ See, e.g., <https://www.ferc.gov/news-events/news/ferc-approves-market-rules-protect-competition-supplies-nyiso>.

¹¹ See, e.g., *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999) (explaining that fast-track processing is to be employed only in very limited circumstances because "of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding" and the potential for over-taxing the Commission's limited resources."); *Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999). See also *Iberdola Renewable Resources, Inc., et al. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011) (citing *Amoco Energy Trading Corp. et al.*, refusing to grant fast track processing, and granting an extended answer and comment period in a case where Complainants sought relief, including tariff revisions aimed at addressing complex issues.)

For the foregoing reasons, the NYISO respectfully asks that the Commission expeditiously grant the extension requested in this motion, and set November 18, 2020 as the deadline for the NYISO's answer and for any other responses to the Complaint.

Respectfully Submitted,

/s/ Ted J. Murphy

Ted J. Murphy

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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 16th day of October 2020.

By: /s/ John C. Cutting

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