

UNITED STATE OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER10-2220-000

**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 a motion for leave to answer, and an answer to, the requests filed in the above docket by the Alliance Utilities (“Alliance”), the Independent Power Producers of New York, Inc. (“IPPNY”),² and TC Ravenswood, LLC and TransCanada Power Marketing, Ltd. (“TransCanada”) for rehearing of the Commission’s *Order on Proposed Mitigation Measures* issued on October 12, 2010.³ Collectively, the Alliance, IPPNY and TransCanada pleadings are referred to below as the “Rehearing Requests.” For the reasons set forth in the NYISO’s pleadings in this docket, including the reasons set forth below, the Rehearing Requests should be denied.

I. REQUEST FOR LEAVE TO FILE ANSWER

The NYISO recognizes that the Commission generally discourages answers to rehearing requests.⁴ Nonetheless, the Commission has the discretion to accept answers to rehearing

¹ 18 C.F.R. §§ 385.212 and 385.218.

² It is the NYISO’s understanding that Alliance is a member of IPPNY and was participating in this proceeding as an IPPNY member until it submitted its intervention request.

³ *N. Y. Indep. Sys. Operator, Inc.*, 133 FERC 61,030 (2010) (“October 12 Order”).

⁴ *See* 18 C.F.R. § 385.213(a)(2).

requests, and has done so when those answers help to clarify complex issues, provide additional information, or are otherwise helpful in the Commission's decision-making process.⁵

The NYISO's answer is limited to a few key points on which the NYISO, as the administrator of the relevant markets, has a unique perspective on the deficiencies in the Rehearing Requests that will assist the Commission in its decision-making.⁶ Accordingly, the NYISO respectfully requests leave to answer the Rehearing Requests.

II. ANSWER

1. There Has Been No Showing that Rest-of-State Generators Are Unable to Recover Their Fixed Costs In the Markets that the NYISO Administers.

The Rehearing Requests argue that a limited group of rest-of-state generators that are only, or almost only, committed for reliability are unable to recover their fixed costs in the markets that the NYISO administers. Alliance makes broad statements that the NYISO's markets are "flawed,"⁷ and claims that the rest-of-state reliability mitigation rules will prevent generators that are needed for reliability from recovering their fixed costs. However, neither

⁵ 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 they have provided information that assisted us in our decision-making process"); *N. Y. Indep. 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).

⁶ By its silence, the NYISO does not concur in any other grounds advanced in the Rehearing Requests, all of which ignore critical portions of the record evidence and arguments considered by the Commission.

⁷ See, e.g., Alliance Rehearing Request at 4 (...seldom-run resources that are dispatched for reliability have only limited opportunities to participate in the energy and capacity markets, flawed as they are.).

Alliance nor IPPNY⁸ submitted evidence that a generator participating in the NYISO's markets that is frequently reliability-committed is unable to recover its going-forward fixed costs due to the rest-of-state reliability mitigation measure. Instead, the various protests and Rehearing Requests argue that reliability-committed generators that were previously subject to the 300% or \$100/MWh rest-of-state mitigation threshold will now be subject to a much tighter 10% or \$10/MWh threshold and will, consequently, receive lesser contributions toward recovery of fixed costs. While this is a true statement, it does not prove that the NYISO's rates are unjust or unreasonable.

In Docket No. ER09-1682, the NYISO provided evidence to the Commission that three generators located outside the New York City Constrained Area were exercising market power at times when they were committed for reliability. The Commission relied on the evidence that the NYISO submitted in reaching the conclusion that mitigation measures are needed to constrain the exercise of market power by reliability-committed generators located outside the New York City Constrained Area.⁹ Despite repeated invitations in this proceeding, and in Docket No. ER09-1682 to submit evidence supporting their claims that the rest-of-state reliability mitigation measure will deny rest-of-state generators a reasonable opportunity to recover their going-forward fixed costs,¹⁰ IPPNY and Alliance have not produced any evidence in support of their claims.

⁸ To the best of the NYISO's knowledge, TransCanada does not presently own a generator that is likely to be subject to the mitigation measure that the Commission accepted in this docket.

⁹ See *N. Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,169 at P 75 (2010) ("In the instant case, NYISO demonstrates that, during August 2009, the Specified Generators were able to bid at prices substantially above their respective marginal costs reflected in their reference levels.").

¹⁰ See the NYISO's September 23 *Motion for Leave to Respond and Response*, Attachment A, *Affidavit of David B. Patton, Ph.D.*, at PP 16-18 ("May of these fixed cost arguments were raised when comparable mitigation measures were implemented for three specific generating units in

IPPNY's rehearing request (at 11) states "several generators have recently filed protective lay-up and retirement notices in the NYISO. IPPNY would note that, as reflected on the NYISO's web site, one of these generally has been subject to DARU calls on essentially a daily basis in 2010." IPPNY's rehearing request cites the *Notice of Protective Lay-Up of Greenidge Unit 4* ("Notice") that is posted on the NYISO's web site. However, IPPNY provides no evidence showing that AES's decision to lay-up Greenidge Unit 4 was caused by the implementation of the rest-of-state reliability mitigation measure that is the subject of this proceeding. The Notice, which was submitted before the mitigation measure at issue in this proceeding became effective, states "based on the current and forecasted wholesale electric prices in Central New York and current and pending environmental regulations, the Greenidge Unit 4 facility is, and will continue to be, operated at a net loss. Thus, given that the unit is not economic at this time, AEE2 intends to put the Greenidge Unit 4 facility in protective lay-up to limit the costs that are incurred at the facility." The Notice does not state that the new mitigation measure caused Greenidge Unit 4 to be placed in protective lay-up. Rather, lower than expected load growth due to the economy, the relatively low price of natural gas, and the recent introduction of a significant amount of new and efficient combined cycle capacity into the New York rest-of-state market all may have contributed to AES's decision to place its generator in protective lay-up.¹¹

up-state New York. [citation omitted] Nonetheless, it has been one year since the mitigation measures were applied to these generators, and none of the three generators have filed a notice of its intention to retire."); Attachment C *Supplemental Affidavit of David B. Patton, Ph.D.* at P 15.

¹¹ The NYISO takes no position in this pleading regarding whether the decision to lay-up Greenidge Unit 4 is reasonable or appropriate decision.

2. Generators that Are Not Needed For Reliability May Permissibly Retire.

The Rehearing Requests appear to suggest that generators located in New York State are *entitled* to recover their fixed costs from the markets that the NYISO administers and that, if the markets do not provide sufficient revenues to permit recovery of fixed costs, including a return on investment, a supplemental compensation mechanism must be put in place. It isn't clear to the NYISO how this position is consistent with the operation of a wholesale electricity *market*. So long as reliable service to loads is not compromised, it is appropriate to permit above-market, inefficient generators to retire.

3. Adequacy of the NYISO's Attachment Y Process.

As the NYISO explained in its *Motion for Leave to Respond and Response* to protests in this proceeding, the number of generators that will be significantly impacted by the new mitigation measure is very small.¹² The Attachment Y process will permit the NYISO, affected Transmission Owner, and the New York Public Service Commission to work together to identify generators that are proposing to retire but that are needed for reliability, and to provide needed compensation, where appropriate.¹³

¹² NYISO *Motion for Leave to Respond and Response* at 6 (September 23, 2010).

¹³ *Id.* at 17-21.

III. CONCLUSION

Wherefore, the New York Independent System Operator, Inc., respectfully requests that the Commission grant this motion for leave to answer, accept this answer, and reject the Rehearing Requests.

Respectfully submitted,

/s/ Alex M. Schnell
Robert E. Fernandez, General Counsel
Alex M. Schnell
New York Independent System Operator, Inc.

November 24, 2010

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 these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, New York, this 24th day of November, 2010.

/s/ Alex M. Schnell

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