

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

Energy Spectrum, Inc. and Riverbay Corporation)
)
)
v.)
)
New York Independent System Operator, Inc.)

Docket No. EL12-56-000

**PRELIMINARY ANSWER OF THE NEW YORK INDEPENDENT SYSTEM
OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this preliminary answer to the *Complaint of Energy Spectrum, Inc. and Riverbay Corporation and Request for Fast Track Procedures and Summary Disposition* (“Complaint”) that was filed on April 12, 2012. This preliminary answer addresses only the Complainants’ request for fast track processing and asks only that the NYISO, and other potential parties, be afforded a reasonable time to respond. The NYISO will submit a substantive answer to the Complaint by whatever deadline is established by the Commission. As is noted below, there is no reason to shorten the standard twenty-day period for answers in this proceeding. If the Commission were to nevertheless establish an accelerated deadline for responses it should make them due no earlier than April 20.

¹ 18 C.F.R. § 385.213 (2011).

I. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs
*David Allen, Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6103
Fax: (518) 356-7678
rfernandez@nyiso.com
rstalter@nyiso.com
dallen@nyiso.com

*Ted J Murphy
Hunton & Williams LLP
2200 Pennsylvania Ave., NW
Washington, D.C. 20037
Tel: (202) 955-1588
Fax: (202) 778-2201
tmurphy@hunton.com

*Designated for receipt of service.

II. PRELIMINARY ANSWER

Complainants seek fast track processing under Commission Rule 206(b)(11) and (h). They do not specify the date by which they are requesting Commission action although it is clear that they seek an order in advance of the upcoming NYISO-administered Installed Capacity Spot Market Auctions (“Spot Auctions”) for June, or even May. Complainants likewise provide no indication of how much time, if any, they believe that the NYISO, and other stakeholders, should be afforded to respond to their claims. It seems clear, however, that they believe that the time for filing answers and comments should be shortened.

To the extent that the Complaint is seeking an abbreviated answer or comment period that request should be denied.² Rule 206(b)(11) places the burden on Complainants to justify fast-track processing. The Commission has made it clear that fast-track processing is not suited to “complex issues”³ and that it is to be employed only in limited circumstances

² The NYISO would have no objection if the Commission were to decide for its own reasons to act on the Complaint faster than the 60-90 days after the filing of responsive pleadings than is contemplated under its “standard” complaint resolution path. *See* <<http://www.ferc.gov/legal/complaints/form-comp/comp-resolution.asp>>. Complainants have failed, however, to justify such action under the fast track processing rules.

³ *Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999).

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.⁴

Complainants have not shown that the issues in this proceeding are simple or justified, imposing the burdens associated with fast-track processing on others. Their request is predicated on a wholly conclusory, and inaccurate, claim that the NYISO’s issuance of Technical Bulletin No. 217 (“TB 217”) was “patently unlawful.” In reality, as the NYISO will explain in its substantive answer, TB 217 is an appropriate, and lawful, clarification of existing tariff provisions that exclude certain behind-the-meter generation in the NYISO’s “Special Case Resource” (“SCR”) program. It in no way modifies the NYISO’s filed tariffs. TB 217 will ensure that all SCRs understand the NYISO’s tariff requirements and compete on a level playing field. It should also discourage inappropriate participation in the NYISO’s SCR program by behind-the-fence generation that is regularly operating to serve electric load, which is consistent with the program’s mission to help to preserve reliability.

In addition, the Complaint makes factual misstatements and conflates the issues actually addressed by TB 217 with unrelated matters, *e.g.*, SCR generation in excess of host load and potential tariff changes related to the NYISO’s Demand Side Ancillary Services Program, in a manner that is likely to confuse the record. The Commission should allow the NYISO, and other interested parties, a reasonable time to address all of these issues.

Furthermore, there is no longer any practical way that the NYISO could include the late enrollments of behind-the-meter base load generation that is addressed with TB 217 in the May Spot Auction. Requiring answers to be filed before that auction is conducted on April 24-25 would thus serve no purpose. As the Complaint acknowledges, the enrollment

⁴ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999).

period for the May Spot Auction closed on April 11. Preparations of the May Spot Auction are already well under way and will be finalized next week. There is no practical way for the NYISO to restart these preparations or to delay the start of the May Spot Auction. Allowing the standard twenty day period would appear, however, to leave time for the Commission to act, and the NYISO to make any necessary response, in advance of the June Spot Auction.

Therefore, the Commission should deny Complainants' request for fast-track processing to the extent that it would impose a shortened answer period. The NYISO and other interested parties should have the standard twenty days to respond. If the Commission nevertheless decides to limit the time for answers in this proceeding it should set the deadline for responses no earlier than April 20 to ensure that the NYISO and other parties have the minimum reasonable time to prepare complete responses.

Respectfully submitted,

/s/ Ted J. Murphy

Ted J. Murphy

Counsel to

the New York Independent System Operator, Inc.

April 13, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list complied 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 (2011).

Dated at Washington, DC this 13th day of April, 2012.

By: /s/Ted J. Murphy
Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, D.C. 20037