

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

Energy Spectrum, Inc. and Riverbay Corporation)	
)	
)	
v.)	Docket No. EL12-56-000
)	
New York Independent System Operator, Inc.)	

**REQUEST FOR LEAVE TO ANSWER AND ANSWER TO
THE INDICATED NEW YORK TRANSMISSION OWNERS
AND THE COMPLAINANTS' NEW 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 New York Independent System Operator, Inc. ("NYISO"), respectfully requests leave to answer and answers the April 27, 2012 *Motion to Intervene Out of Time and Answer of the Indicated New York Transmission Owners* (the "*Indicated NYTOs' Answer*") and the April 30, 2012 *Motion for Leave to Answer and Answer of Energy Spectrum, Inc. and Riverbay Corporation* (the "*New Riverbay Answer*").

The Indicated NYTOs² appear to agree with the NYISO that allowing resources that cannot reduce Load³ at the direction of the NYISO to participate in the Special Case Resources ("SCR") program would create a reliability "issue."⁴ They mistakenly argue, however, that this reliability issue can only be addressed through a tariff revision or, in the short-term, by obtaining

¹ 18 C.F.R. § 385.213 (2011).

² The Indicated NYTOs are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, and Orange and Rockland Utilities, Inc.

³ Capitalized terms that are not otherwise defined herein shall the meaning specified in Section 2 of the Services Tariff.

⁴ *Indicated NYTOs' Answer* at 5 ("The Indicated New York Transmission Owners recognize that this is a reliability issue . . .").

a tariff waiver. The *New Riverbay Answer* suggests that Technical Bulletin 217 has impacted Installed Capacity Spot Auction clearing prices to an extent that is clearly implausible.⁵

The NYISO respectfully requests leave to submit this answer so that it may highlight three important points. First, the Indicated NYTOs misunderstand section 4.12.4.4 of the NYISO's *Installed Capacity Manual*, which is the only tariff or manual provision that they cite to support their position. Second, even if section 4.12.4.4 had the meaning that the Indicated NYTOs ascribe to it, it would be irrelevant because the *Installed Capacity Manual* cannot override the clear language of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). The NYISO has previously explained that Technical Bulletin 217 in no way alters the Services Tariff but instead simply restates and clarifies what it has always required. Third, the NYISO must correct Complainants'⁶ incredible assertions regarding the supposed impact of Technical Bulletin 217 on capacity clearing prices.

The fact that the NYISO has deferred to the Commission's preference that parties avoid unnecessary responses to answers by limiting this pleading to these three points should not be construed as agreement with, or acceptance of, any other assertion that has been made in support of the Complaint.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to accept responses to answers when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.⁷ Accordingly, the NYISO has limited this answer to identifying and

⁵ *New Riverbay Answer* at 2.

⁶ Complainants are Energy Spectrum, Inc. and Riverbay Corporation.

⁷ See e.g., *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New*

clarifying two limited points that are raised by the *Indicated NYTOs' Answer* and correcting the assertions in the *New Riverbay Answer*. The NYISO therefore respectfully requests that the Commission exercise its discretion and accept this pleading.

II. ANSWER

A. Technical Bulletin 217 Restates and Clarifies Rules that Were Already in the Services Tariff and the *Installed Capacity Manual*; It Is Not a Substantive Change

The Indicated NYTOs assert that Technical Bulletin 217 “seeks to address a substantive issue with respect to the Services Tariff without adhering to the applicable governance procedural requirements.”⁸ They do not explain how Technical Bulletin 217 is inconsistent with, let alone how it represents a revision to, any provision of the existing Services Tariff. They likewise do not address the NYISO’s explanation that Technical Bulletin 217 is fully consistent with the Services Tariff. The Services Tariff has always included, and should have always been understood to include, the core, reliability-based requirement, that resources be able to reduce demand at the direction of the NYISO in order to enroll as a SCR.⁹ Behind the meter generation that can meet this requirement, such as emergency generation and incremental generation of a unit regularly operating in baseload status that remains available to serve load, will continue to be eligible to enroll in the SCR program. Behind the meter generation that cannot reduce demand at the NYISO’s direction should not be participating in the market as a SCR and provides no reliability benefit. The issuance of Technical Bulletin 217 does not alter any of these facts.

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 . . .”).

⁸ *Indicated NYTOs' Answer* at 4.

⁹ See *Answer and Request for Expedited Action of the New York Independent System Operator, Inc.*, Docket No. EL12-56-000 at 8-10 (April 19, 2012) (“April 19 Answer”).

Instead of addressing the Services Tariff, the Indicated NYTOs focus on section 4.12.4.4 of the *Installed Capacity Manual*. They suggest that it “appears to conflict” with Technical Bulletin 217 but this is not the case. Section 4.12.4.4 is a subpart of section 4.12.4 which reads (emphasis added):

4.12.4 Performance

A Special Case Resource must make Energy available, for a minimum four (4) hour block (except where environmental constraints that have been previously considered and approved by the NYISO require a shorter block), in amounts that correspond to the Installed Capacity Equivalent of the amount of Unforced Capacity it supplies to the NYCA, **by reducing Load or by transferring Load to a distributed generator. The obligation to reduce Load or to transfer Load to a distributed generator shall commence at the top of the hour** after the NYISO has provided the following notices:

- a. on the day before the Special Case Resource’s performance may be required, the NYISO shall provide twenty-one (21) hour notice to the RIP, so long as notification is provided by 3:00 PM ET. If notice is provided to the RIP after 3:00 PM ET on the day before the Special Case Resource’s performance may be required, then the NYISO shall instead provide twenty-four (24) hours notice;
- b. following the advance notice described in (a) above, on the operating day the NYISO shall provide at least two (2) hours notice to the RIP that the Special Case Resource’s performance will be required. **The Special Case Resource shall reduce its Load or to transfer Load to a distributed generator (as appropriate) commencing at the top of the hour immediately after the two-hour notice period has expired.** In the alternative, **the NYISO may specify the hour at which the Special Case Resource shall commence performance of its obligation by reducing its Load or to transferring Load to a distributed generator** (as appropriate), so long as the start hour specified by the NYISO is at least two hours in the future.

Section 4.12.4.4. must be read in tandem with section 4.12.4, not in isolation from it. It cannot be read as authorizing any and all behind the meter generation to participate in the SCR program. It can only be read as referring to participation as SCRs by the kinds of emergency and incremental generators that were referenced above and that are capable of reducing demand when instructed to do so. The latter reading is also consistent with both the Services Tariff and

the numerous other *Installed Capacity Manual* provisions that the NYISO has previously referenced.¹⁰ Thus, there is no inconsistency between section 4.12.4.4 and Technical Bulletin 217.

Even assuming *arguendo* that section 4.12.4.4 were somehow in conflict with Technical Bulletin 217, it would not invalidate Technical Bulletin 217. As the NYISO has noted, Commission precedent holds that when a tariff is clear then the plain language of the tariff controls.¹¹ Extrinsic evidence, including the text of manuals, is only relevant to the extent that a tariff is ambiguous. The Services Tariff clearly requires that a SCR must be able to reduce system load at the NYISO's request during certain specified reliability events in order to participate in the SCR program. There is thus no need to consider the *Installed Capacity Manual*. Because Technical Bulletin 217 merely restates and clarifies the Services Tariff, any conflict between it and section 4.12.4.4 would properly be resolved by clarifying the *Installed Capacity Manual* to conform to the tariff, not by revising the tariff (and Technical Bulletin 217) to align with the manual.

B. Complainants' Claim Regarding the Supposed Impact of Excluding Behind the Meter Generation that Cannot Reduce Demand from the SCR Program Is Clearly Implausible

The *New Riverbay Answer* falsely attributes the fact that the clearing price in the NYISO's Installed Capacity Spot Auction for Zone J (*i.e.*, New York City) for May 2012 was higher than the corresponding price for May 2011 to the issuance of Technical Bulletin 217.¹² It goes on to: (i) suggest that the price for May 2012 somehow disproves the NYISO's observation that neither Complainants nor any other party would suffer a legally cognizable harm as a result

¹⁰ See April 19 Answer at 10-13.

¹¹ *Id.* at 10.

¹² See *New Riverbay Answer* at 2.

of continued adherence to the reliability requirement reflected in Technical Bulletin 217; and (ii) “forecast” that absent a Commission order invalidating this paramount reliability requirement that there will be a similar impact on clearing prices in future Installed Capacity Spot Auctions.¹³

These claims are clearly not reasonable. While tariff confidentiality requirements prevent the NYISO from voluntarily providing a detailed explanation of the various factors that produced the May 2012 spot auction results, Complainants need only have considered publicly available information to discern that their claim is not plausible. Publicly available data indicates that Technical Bulletin 217 had a negligible impact on SCR participation for May 2012. Zone J SCR capacity available for the ICAP Auction in May 2012 (353.4 MW) was only 17.4 MW less than the SCR capacity that participated in May 2011 (370.8 MW).¹⁴ Even if all of this reduction could somehow be attributed to the issuance of Technical Bulletin 217, it would still represent less than five percent of the available SCR capacity that participated in last May’s ICAP Market. Further, when compared to all eligible capacity that participated in the Installed Capacity Market for May in Zone J, this 17.4 MW is well below 0.2 percent of the total NYC capacity.¹⁵

Other factors affected the change in the Installed Capacity Spot Auctions from May 2011 to May 2012 to a much larger degree. These include: (i) the implementation of the Summer 2012 Capability Period Installed Capacity Demand Curve for Zone J (May 1 is the beginning of the Capability Period); (ii) the application of the new Installed Reserve Margin and Locational Capacity Requirements for the Summer Capability Period; and (iii) several hundred megawatts of publicly announced generator mothballing decisions.

¹³ *Id.*

¹⁴ See http://icap.nyiso.com/ucap/public/auc_view_default_reference_price_detail.do; and http://www.nyiso.com/public/webdocs/products/icap/monthly_scr_reports/2011/SCR_May_2011_Summary.pdf

¹⁵ *Id.*

In short, it is clearly unreasonable for Complainants to claim that adherence to the reliability requirement in Technical Bulletin 217 caused the increase in May 2012 Installed Capacity Spot Auction clearing prices. The exclusion of ineligible resources is required by the Services Tariff, and any price increase associated with such exclusion cannot be said to “harm” Complainants, other market participants, or consumers.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. (“NYISO”), respectfully requests that the Commission accept this answer and renews its request that the Commission expeditiously issue an order dismissing the Complaint in its entirety.

Respectfully submitted,

/s/ Ted J. Murphy

Ted J. Murphy

Counsel to

the New York Independent System Operator, Inc.

May 1, 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 1st day of May, 2012.

By: /s/ Ted J. Murphy
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