

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

Hudson Transmission Partners, LLC)	
)	
v.)	Docket No. EL12-98-00_
)	
New York Independent System Operator, Inc.)	

**REQUEST OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
FOR FURTHER EXTENSION OF TIME,
SHORTENED RESPONSE PERIOD, AND EXPEDITED ACTION**

Pursuant to Rule 2008 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully requests that the Commission grant a further extension of time until December 12, 2012 (*i.e.*, three months from the date of this request) for the NYISO to submit its answer, and for other parties to respond, to the August 3, 2012 *Complaint of Hudson Transmission Partners, LLC* (“Complaint”) in this proceeding. The NYISO is requesting this extension so that it will be able to make any necessary adjustments to its answer² to account for the potential impact of the Commission’s September 10, 2012 Order in Docket No. EL11-50³ on its redetermination for the Hudson Transmission Partners, LLC (“HTP”) merchant transmission project (“HTP Project”). The potential impacts relate to both the issues raised by the Complaint and to other components of the underlying HTP Project

¹ 18 C.F.R. §§ 385.2008 (2011).

² The Complaint is to the NYISO’s buyer-side mitigation determination issued on December 22, 2011. The results of that determination will be supplanted by the redetermination to be issued in accordance with the June 22 Order.

³ *Astoria Generating Company, L.P., et al. v. New York Independent System Operator, Inc.*, 140 FERC ¶ 61,189 (2012) (“September 10 Order”). The NYISO reserves the right to request clarification of the September 10 Order.

exemption analysis that are not mentioned in the Complaint but that may affect the determination for the HTP Project.

The NYISO also requests that the Commission shorten, or waive, the normal period for responding to filings to the maximum extent possible, so that the Commission may act expeditiously to issue an order granting the requested extensions and limited waiver by September 14, 2012.⁴

Concurrent with this filing, and as discussed below, the NYISO is requesting an identical extension of time to comply with certain requirements established in Docket No. EL11-42-000 related to the exemption analysis for the HTP Project.

The NYISO understands that HTP opposes granting an extension of time to file answers and comments in this proceeding but that HTP does not oppose the request for a 90 day extension in Docket No. EL11-42-000.

I. BACKGROUND

The Complainant challenges the NYISO's December 2011 determination under the In-City buyer-side mitigation rules ("BSM Rules"),⁵ that the HTP Project is subject to Offer Floor mitigation upon entry. The June 22 Order required the NYISO to revise that determination to

⁴ In the alternative, should the Commission reject the requested three-month extension in this proceeding, the NYISO respectfully requests an additional five business days (*i.e.*, until Friday September 21, 2012) to submit answers and comments to the Complaint. A brief extension would be warranted because the NYISO has devoted considerable time to evaluating the effects of the September 10 Order on the HTP Project's redetermination. Even if the NYISO is not given a three month extension to prepare an answer that fully accounts for the September 10 Order's impact on the analysis underlying its mitigation determination for the HTP Project, a shorter extension is appropriate to permit the NYISO and other parties to make any necessary adjustments to their pleadings in this docket to address aspects of the September 10 Order that are directly relevant to the issues raised by the Complaint.

⁵ The BSM Rules, which are the subject of the June 22 Order, are the currently-effective buyer-side capacity market mitigation provisions in Section 23 (Attachment H) of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"), including revisions that were accepted by the Commission, effective November 27, 2010, in its series of orders in Docket No. ER10-3043. *See* June 22 Order at P 6.

reflect the Commission's directives regarding the application of certain inflation adjustments in the analysis for the HTP Project.⁶ Because the Complaint was filed before the NYISO's issuance of a redetermination for the HTP Project in accordance with June 22 Order, the NYISO requested an extension of time. The Commission granted an extension until September 14, 2012 for all answers and comments on the Complaint.

On Friday September 7, 2012, the NYISO filed a status report in Docket No. EL12-98 indicating that the redetermination notice to HTP, the posting of a stakeholder notice regarding it, and the NYISO's independent Market Monitoring Unit ("MMU's") report, would all be done concurrently within the next several days.

The September 10 Order addressed the NYISO's exemption determinations for two projects, Astoria Energy II ("AEII") and the Bayonne Energy Center ("BEC"). Those determinations were made pursuant to the previously effective version of the In-City buyer-side mitigation measures. The September 10 Order directed the NYISO to reissue the AEII and BEC determinations to reflect specific directives.⁷ For example, it required the NYISO to make a number of other specific adjustments to its analysis of AEII, including to AEII's cost of capital, the treatment of sunk costs, and other components.⁸

Prior to the issuance of the September 10 Order, the NYISO was prepared to make the issuance and postings required by the June Order and to file its answer to the Complaint by September 14, 2012. However, the September 10 Order's requirement that the NYISO recalculate the exemption determinations for AEII and BEC has the potential to materially impact

⁶ *Astoria Generator Co., L.P. v. New York Independent System Operator, Inc.*, 139 FERC ¶ 61,244 (2012) at P 132 ("June 22 Order").

⁷ September 10 Order at P 1.

⁸ *Id.* at P 140.

the analysis of the HTP Project. The NYISO believes that the better approach would be to defer the filing of its answer in this proceeding until after the NYISO (and the MMU) can consider and address the potential impact of the September 10 Order on the underlying exemption determination for the HTP Project, perform a complete and final redetermination, and satisfy the issuance, posting, and reporting obligations established in Docket No. EL11-42-000.

II. MOTION FOR EXTENSION OF TIME

The NYISO requests an additional three months (*i.e.*, until December 12, 2012) to submit its answer, and for other parties to submit their responses, to the HTP Complaint. As noted above, the NYISO is separately requesting a three month extension of time to complete the exemption redetermination for the HTP Project to reflect the impact of the September 10 Order, to issue a notice that HTP is exempt or non-exempt to its stakeholders, and for the MMU to prepare an independent report on the determination.

Granting a parallel extension of time for the NYISO to submit its answer in this docket would permit the answer to fully address the analysis underlying the HTP Project determination as well as those aspects of the September 10 Order that directly affect the arguments raised by the Complaint. It would also allow the NYISO's answer to consider the MMU's independent report on the HTP Project exemption analysis. The Commission previously acknowledged that it is reasonable to link the deadline for answers and comments in this proceeding to the completion of the analyses and reports required by the June 22 Order by extending the filing deadline in this proceeding to September 14 so that parties could account for these analyses and reports. If the NYISO were to submit its answer before the analyses and reports were complete it would likely be necessary to update the answer, and for other parties to update their filings or make new ones, to account for the implications of the September 10 Order. Requiring the NYISO to submit its

answer before those implications are known would thus complicate the record, and the Commission's decision-making process in this proceeding, without providing the market or HTP with greater certainty.

The need to review the potential implications of the September 10 Order on the HTP Project's redetermination has already required significant time and attention from the NYISO and the MMU. That review has revealed that more time is needed because the Commission's September 10 Order requires the NYISO to take actions that will directly impact the analysis for the HTP Project's redetermination. The NYISO must also evaluate the extent of those impacts and whether it will be seeking rehearing or clarification of that order.

The NYISO must request data and consult with the developers of those projects regarding the data submitted, in order to revise its determinations for the AEII and BEC projects. Once the NYISO has obtained all of the necessary data, the NYISO must complete the AEII and BEC redeterminations before completing the HTP Project's redetermination. Those redeterminations will require extensive input from both the MMU and the NYISO's consultants. Specifically, the NYISO will have to work with both Sargent & Lundy, LLC (for input and assistance with calculations regarding projects costs) and NERA Economic Consulting (for input and assistance with energy and ancillary services estimates). Additionally, complying the September 10 Order's directives will also require significant resources from the NYISO, most significantly from its subject matter experts who are responsible for all market mitigation matters and must focus their time and attention accordingly. A December 12, 2012 deadline will allow the NYISO to complete and issue these redeterminations before the December 18, 2012 close of certification

for the January Spot Market Auction.⁹ Issuing the redeterminations by this deadline will provide certainty and clarity for both market participants and the market.

Although the assertions in the Complaint are based on the NYISO's prior determination for the HTP Project, the NYISO is, concurrent with this request, asking for additional time to reissue the HTP Project's determination, to notify the market of the revised determination, and for the MMU to complete and publish its report. A further extension will promote administrative efficiency and help to ensure the development of a complete, coherent, and accurate record, because it will ensure that all parties will include the most accurate information regarding the application of the BSM Rules to the HTP Project in their filings.

Granting this request will not prejudice any party, as all parties will benefit from having the most relevant information and increased market certainty. Further, the MMU supports this request for a three-month extension.

III. MOTION FOR SHORTENED RESPONSE PERIOD AND FOR EXPEDITED ACTION

To the extent necessary, the NYISO respectfully requests that the Commission shorten, or eliminate, the normal period for answering motions so that it may issue an order extending the answer deadline as expeditiously as possible (and no later than September 14, 2012). Expedited action will give the NYISO, and other parties, certainty regarding the deadline for responses.

IV. CONCLUSION

For the reasons set forth above, the New York Independent System Operator, Inc. respectfully requests that the Commission: (i) grant an additional extension of time until December 12, 2012 for responses to the Complaint; and (ii) shorten, or waive, the normal

⁹ See ICAP Event Calendar available at <http://icap.nyiso.com/ucap/public/evt_calendar_display.do>

response period to the maximum extent practicable so that the Commission may expeditiously issue an order granting the extension no later than September 14, 2012.

Respectfully submitted,

/s/ *Ted J. Murphy*

Ted J. Murphy
Counsel for the
New York Independent System Operator, Inc.

September 12, 2012

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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 compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2011).

Dated at Washington, D.C. this 12th day of September, 2012.

/s/ Catherine Karimi
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