

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

Astoria Generating Company, L.P.; NRG Power)	
Marketing LLC; Arthur Kill Power, LLC; Astoria Gas)	
Turbine Power LLC; Dunkirk Power LLC; Huntley)	
Power LLC; Oswego Harbor Power LLC; and)	
TC Ravenswood, LLC)	Docket No. EL11-42-00_
)	
v.)	
)	
New York Independent System Operator, Inc.)	

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

Pursuant to Rules 212 and 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 an extension of time until December 12, 2012 (*i.e.*, three-months from the date of this request) for the NYISO to issue a revised buyer-side mitigation rule (“BSM Rules”)² determination for the Hudson Transmission Partners, LLC (“HTP”) merchant transmission project (“HTP Project”), and for the concurrent posting of a notice to stakeholders of the exempt or non-exempt determination and for the NYISO’s independent Market Monitoring Unit’s (“MMU”) report, in compliance with the Commission’s June 22 Order in Docket No. EL11-42

¹ 18 C.F.R. §§ 385.212 and 2008 (2011).

² The BSM Rules, which are the subject of the June 22 Order, are the currently-effective buyer-side capacity market mitigation provisions in the 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.

(“June 22 Order”),³ as further explained below. The NYISO is requesting this extension so that it, and the MMU, will have a reasonable time to account for the potential impact of the Commission’s September 10, 2012 Order in Docket No. EL11-50⁴ on the redetermination for the HTP Project and to make any necessary adjustments to the issuance, and notice, and for the MMU to revise its report.

Additionally, the NYISO requests a limited waiver of the June 22 Order, to the extent necessary, to allow it to expand the scope of its retest analysis for the HTP Project to reflect the redeterminations of Astoria Energy II (“AEII”) and the Bayonne Energy Center (“BEC”) and, if and to the extent appropriate, incorporate any relevant guidance from the September 10 Order that the June 22 Order did not expressly direct it to consider.

Finally, the NYISO 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.

HTP has authorized the NYISO to state that it does not oppose the NYISO’s request for an extension. The MMU has authorized the NYISO to state that it supports this request for an extension.

³ *Astoria Generator Co., L.P. v. New York Independent System Operator, Inc.*, 139 FERC ¶ 61,244 (2012) (“June 22 Order”).

⁴ *Astoria Generating Company, L.P., et al. v. New York Independent System Operator, Inc.*, 140 FERC ¶ 61,189 (2012) (“September 10 Order”). The NYISO is reviewing the September 10 Order. Nothing in this request should be construed to impair the NYISO’s right to request clarification or rehearing of it.

I. BACKGROUND

The June 22 Order required the NYISO to revise the buyer-side mitigation determination for the HTP Project to reflect the Commission's directives regarding the application of certain inflation adjustments.⁵ On August 3, 2012, in Docket No. EL12-98, HTP filed a complaint regarding the NYISO's determination, under the BSM Rules, that the HTP Project is subject to Offer Floor mitigation upon entry.⁶ Because the Complaint was filed before the NYISO's issuance of the redetermination for the HTP Project in accordance with the 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 MMU's report, would all be done concurrently within several days.

The September 10 Order addressed the NYISO's exemption determinations for two projects, AEII and 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 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

⁵ June 22 Order at P 132.

⁶ HTP's complaint concerns 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.

⁷ September 10 Order at P 1.

⁸ *Id.* at P 140.

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 re-calculate the exemption determinations for AEII and BEC has the potential to materially impact the analysis of the HTP Project. The NYISO believes that the better approach would be to delay the issuance, and postings required in Docket No. EL11-42 to allow the NYISO (and the MMU) time to consider and address the potential impact of the September 10 Order on the NYISO's determination under the BSM Rules for the HTP Project.⁹

II. REQUEST FOR LIMITED WAIVER OF THE JUNE 22 ORDER

The NYISO requests a limited waiver, to the extent necessary, of the June 22 Order's requirement that it make a redetermination for the HTP Project that incorporates the June 22 Order's guidance on inflation adjustment¹⁰ The NYISO believes that a waiver may be necessary because the June 22 Order's requirement that it provide a redetermination to the HTP Project was limited to that Order's findings on the application of inflation adjustments and does not expressly allow the NYISO to make other adjustments.¹¹

⁹ The NYISO is concurrently requesting an additional extension of time to file its answer and for other parties to respond to HTP's complaint in Docket No. EL12-98. The NYISO understands that HTP does oppose that requested extension.

¹⁰ See June 22 Order at PP 45, 132.

¹¹ To the extent that the Commission believes that a request for waiver is not an appropriate vehicle for modifying the requirements of the June 22 Order, the NYISO respectfully requests that the Commission exercise its discretion to grant reconsideration of the June 22 Order to the extent necessary to allow the NYISO to account for the impact of the September 10 Order on the HTP Project analysis. The Commission has found that it has "broad discretion regarding whether to reconsider its orders." *Transparency Provisions of Section 23 of the NGA*, 125 FERC ¶ 61,302 at P 3 (2008) (noting that "[t]he Commission has broad discretion regarding whether to reconsider its orders"). The Commission has found that reconsideration is warranted where "new information or evidence of changed circumstances" is shown. *Enterprise Texas Pipeline, L.P.*, 117 FERC ¶ 61,025 at P 7 (2006). Because the September 10 Order could materially impact the HTP Project analysis it should qualify as a "changed circumstance" that would justify granting reconsideration.

The requested waiver satisfies the factors that the Commission has previously considered in granting tariff waiver requests. Specifically, a “concrete problem” exists insofar as it is reasonable for the NYISO to consider the potential impact of the September 10 Order on the HTP Project’s determination analysis before issuing a redetermination. The NYISO has acted in good faith because it could not have incorporated the September 10 Order’s guidance into the HTP Project analysis before the September 10 Order was issued. The scope of the waiver request is limited because it only applies to the HTP Project.

Finally, granting the requested waiver will not have “undesirable consequences or harm third parties.” In order to prepare a complete and accurate determination under the BSM Rules for the HTP Project, the NYISO must account for the AEII and BEC redeterminations required by the September 10 Order. For example, the September 10 Order has factual ramifications for the HTP Project analysis, because the redeterminations for AEII and BEC may change forecasts required under sections 23.4.5.7.3.3 of the NYISO’s Market Administration and Control Area Services Tariff.

Although this request will delay the issuance of a redetermination to the HTP Project, the delay should not be viewed as an “undesirable consequence” or as “harming” the HTP Project. Granting the waiver will allow the NYISO to issue a single redetermination for the HTP Project instead of first issuing one in response to the June 22 Order that might then have to be revised to account for the September 10 Order. The NYISO believes that making a single redetermination will better promote market certainty and potentially reduce the scope of potential future litigation concerning it.

III. MOTION FOR EXTENSION OF TIME

The NYISO respectfully requests an additional three months (*i.e.*, until December 12, 2012) for the NYISO to reissue the HTP Project's determination, for the NYISO to notify the market of the redetermination, and for the MMU to complete and publish its report. A preliminary assessment of the potential implications of the September 10 Order confirms that it may affect the HTP Project redetermination. To comply with the September 10 Order's directives, the NYISO anticipates it may need to request data and consult with AEII and BEC regarding the data submitted as part of the validation process. Once the NYISO has obtained all of the necessary data, it will have to complete the AEII and BEC redeterminations. Those redeterminations will require consultation with the MMU, and input from the NYISO's consultants. Specifically, the NYISO anticipates having 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 required energy and ancillary services estimates).

Additionally, complying with the September 10 Order's directives will also have significant impact on resources from the NYISO, especially from the relevant subject matter experts who are responsible for all ICAP market monitoring and mitigation matters. Although these NYISO personnel will focus heavily on completing the redeterminations it will not be possible for them to focus on them exclusively.

Issuing the redeterminations by this deadline will provide certainty and clarity for both market participants and the market. In particular, the NYISO believes that granting an extension until December 12, 2012, will allow the NYISO to issue the redeterminations in advance of the December 18, 2012 close of certification for the January 2013 Spot Market

Auction so that market participants have an opportunity to consider the information as they make their business decisions.¹²

IV. 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.

V. CONCLUSION

For the reasons set forth above, the New York Independent System Operator, Inc. respectfully requests that the Commission: (i) grant limited waiver, to the extent necessary, to allow the NYISO to account for the effect of the Commission's September 10 Order's directives on the revised HTP Project's determination; (ii) grant an extension of time until December 12, 2012 for the NYISO to issue and post its redetermination for the HTP Project, as well as for the MMU to complete and publish its report; and (iii) shorten, or waive, the normal response period

¹² See ICAP Event Calendar available at http://icap.nyiso.com/ucap/public/evt_calendar_display.do

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

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New York Independent System Operator, Inc.

September 12, 2012

cc: Travis Allen
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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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