

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.)

Docket No. ER11-4338-000

**MOTION OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
REQUESTING EXTENSION OF TIME TO SUBMIT COMPLIANCE FILING,
REQUEST FOR FIVE-DAY ANSWER PERIOD,
AND REQUEST FOR EXPEDITED COMMISSION ACTION**

In accordance with Rule 212 of the Commission’s Rules of Practice and Procedure, the New York Independent System Operator, Inc. (“NYISO”) hereby moves for a sixty day extension of time, *i.e.*, until August 14, 2013, to submit the compliance filing required by the Commission’s May 16, 2013 order in this proceeding (“May 16 Order”).¹ The requested extension would afford the NYISO a reasonable time to discuss the May 16 Order’s various complex directives with its stakeholders before proceeding to develop and file compliance tariff revisions. An extension would also be consistent with other Commission orders addressing Order No. 745 compliance filings, which generally established ninety day compliance filing deadlines.

The NYISO also respectfully requests that the Commission adopt the standard five day answer period provided for responses under Rule 213(d)(1)(i) and expeditiously issue an order granting the requested extension no later than June 17, 2013, *i.e.*, the date that the NYISO’s compliance filing is currently due.

¹ See *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,134 (2013).

I. BACKGROUND

The Commission issued Order No. 745 on March 15, 2011.² That Order addressed the amount of compensation to be paid to demand response providers in the “organized” wholesale energy markets, including the NYISO-administered energy markets. Specifically, it required each Commission-jurisdictional Independent System Operator (“ISO”) and Regional Transmission Organization (“RTO”) to pay a demand response resource the market price for energy, *i.e.*, the locational marginal price (“LMP”), when two conditions are met. First, the demand response resource must have the capability to balance supply and demand as an alternative to a more expensive generation resource. Second, dispatching the demand response resource must be cost-effective as determined by a “net benefits test” (“NBT”), by providing an expected energy cost savings to the Loads that participate in the NYISO energy markets. Order No. 745 also required that the costs to pay these demand response resources be allocated to the Loads that benefit from these resources being scheduled to perform a load reduction.³

On August 19, 2011, after conducting significant analytical studies to determine an appropriate method to execute the NBT methodology prescribed by the Commission, and engaging in extensive stakeholder discussions, the NYISO submitted its compliance filing (“August 2011 Filing”). The filing proposed amendments to the NYISO’s tariffs, and in particular to the provisions governing its Day-Ahead Demand Response Program (“DADRP”), as required by Order No. 745. A significant component of the August 2011 Filing addressed the methodology and implementation of its proposed monthly NBT. The NYISO also proposed

² *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187 (March 15, 2011); *reh’g denied*, Order No. 745-A, 137 FERC 61,215 (Dec. 15, 2011); *reh’g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012).

³ Since 2001, the NYISO has administered its Day-Ahead Demand Response Program, which allows qualified demand response resources to receive LMP. The Day-Ahead Demand Response Program allocates the costs associated with scheduling these resources to all Loads that benefit from these resources, based upon the top three historically congested interfaces in the New York Control Area.

revisions to the measurement and verification requirements used to measure performance of the DADRP resources. Further, the August 2011 Filing proposed no material changes to the cost allocation methodology for the DADRP, except, in response to a stakeholder request, to recognize conditions when congestion occurred on multiple interfaces.

The NYISO asked the Commission to accept the compliance tariff revisions by February 16, 2012 and to make them effective by March 31, 2012. The NYISO requested these dates to allow sufficient time for the Commission's review and because a significant amount of effort was required to design, test and implement the necessary software modifications needed to execute the proposed monthly NBT, as well as to implement the proposed measurement and verification and cost allocation tariff revisions.

In a letter dated February 14, 2012, the NYISO notified the Commission that, in the absence of an affirmative order, it would have to suspend work on the software changes needed to, and disable the software changes it had already put in place to, support the August 2011 Filing. This was necessary in order to avoid delays to the deployment of other intertwined software scheduled for implementation in March 2012. On February 23, 2012, the NYISO filed a motion asking the Commission to defer the proposed effective date for the compliance tariff revisions.⁴ The letter and the subsequent motion explained that the software changes that the NYISO would need to complete once the Commission acted on the compliance filing would impact several aspects of the NYISO energy market administration and settlement processes. Most importantly, the NYISO alerted the Commission that it could no longer meet the March 2012 deployment and would need to cease all work on its software implementation plans in order to allow numerous other projects to continue to move forward. The NYISO also stated that once

⁴ *New York Independent System Operator, Inc.*, Motion to Defer Proposed Effective Date of Tariff Revisions of the New York Independent System Operator, Inc., Docket No. ER11-4338-000 (Feb. 23, 2012).

the Commission did act on the August 2011 Filing, it would need sufficient time to identify a new practicable effective date for implementation of the tariff provisions.

The May 16 Order conditionally accepted in part and rejected in part the tariff revisions proposed in the August 2011 Filing. It imposed a number of compliance requirements on the NYISO and required it to submit a new compliance filing within thirty days, *i.e.* by June 17, 2013.

II. MOTION FOR EXTENSION OF TIME

The NYISO understands the great importance that the Commission places on timely compliance with Order No. 745. Nevertheless, after analyzing the May 16 Order, and evaluating what must be done to comply with its directives, the NYISO has concluded that it will not be practicable, notwithstanding its best efforts, for it to make a compliance filing by June 17, 2013. The NYISO considered whether it might submit a partial compliance filing by that date limited to those requirements that could potentially be addressed within thirty days. It believes, however, that because so many of the issues are closely interrelated that the better course would be to address all of the issues in a single filing. The NYISO is therefore submitting this motion requesting a sixty day extension of time to submit its compliance filing.

There is good cause to grant this motion because many of the directives imposed by the May 16 Order raise complex compliance issues that the NYISO will need additional time to properly analyze and address. These include requirements that the NYISO: (i) analyze the potential implications for the monthly NBT of implementing a different methodology of identifying the supply curve for the reference month than the one proposed in the August 2011 Filing;⁵ (ii) design and implement a program that evaluates DADRP bids without an offer floor,

⁵ May 16 Order at 12-15.

including a separate settlement methodology for DADRP bids scheduled below the NBT threshold that was not contemplated in the August 2011 Filing;⁶ (iii) analyze and identify requirements to create software functionality to consider alternate measurement and verification methodologies;⁷ and (iv) evaluate a redesign of the cost allocation methodology and the potential implications of such a change.⁸ As mentioned above, the NYISO did not contemplate a full redesign of the DADRP in preparing its August 2011 Filing since the DADRP already paid demand response resources LMP and included an approved cost allocation methodology that was designed to allocate cost to the NYISO market participants in the manner in which they benefitted from scheduling DADRP resources.

The NYISO will need to recommit a significant amount of resources to fully evaluate the significant issues posed by the May 16 Order. NYISO personnel assigned to these issues must re-familiarize themselves with technical requirements and challenges associated with the NBT methodology and program improvements proposed in the August 2011 Filing. They must also assess the impact on the suspended software implementation plans resulting from market evolution implementations that have occurred since March 2012, and determine how renewed implementation efforts would fit with work on other market and software initiatives in progress. While the NYISO might conceivably have been able to address a few of these issues within thirty days, it cannot possibly complete work on all the numerous issues posed by the May 16 Order and assess the resulting impact on other ongoing NYISO market and software initiatives in that time frame.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 32-33.

Moreover, that the May 16 Order did not directly accept two of the three major components of the August 2011 Filing, *i.e.*, methodology for calculating the NBT threshold and the cost allocation methodology. The May 16 Order also directed potential changes to the DADRP not contemplated by the NYISO in preparation of the August 2011 Filing, *i.e.*, allowing alternative baseline methodologies for measurement and verification, eliminating the in-day adjustment cap to the baseline methodology, and eliminating the application of the DADRP offer floor. These rulings give rise to additional complexities that introduce new requirements for implementation of Order No. 745. For example, if the NYISO must include low load hours in the supply curve, there may be some reference months when the NYISO cannot determine a definitive supply curve. Additionally, if the NYISO is required to eliminate the DADRP offer floor, program design changes will need to be developed to address payments to demand response resources that are scheduled but do not meet the NBT. Evaluating the elimination of the in-day adjustment cap will require also research and an assessment of impacts to the effectiveness of the Economic Customer Baseline Load for DADRP, as well as other Customer Base Loads that use the same in-day adjustment procedure.

Beyond needing more time to analyze complex issues, additional time would allow the NYISO to discuss the May 16 Order directives, and its compliance plans, with its stakeholders. The NYISO recognizes that stakeholder approvals are not required before it submits a compliance filing but believes that taking time to allow for thorough stakeholder input would be especially valuable in the context of this proceeding. It seems clear that the benefits of allowing for stakeholder review to potentially improve the quality of the NYISO's compliance filing, and possibly reduce the number and intensity of disputed issues that ultimately come before the Commission, would greatly outweigh any possible disadvantage of allowing an extension. The

NYISO would also note that stakeholders have already expressed interest in the issues raised by the May 16 Order and their hope that the NYISO will conduct a stakeholder review. As with NYISO personnel, stakeholders have not focused on these issues for some time and will need to re-familiarize themselves with the technically complex details in order to provide substantive feedback to the NYISO.

The NYISO does not believe that granting the relatively brief extension it has requested would harm the interests of any stakeholder or any party in this proceeding. Given the need to develop, test, and deploy software, the NYISO most likely would not have been able to implement DADRP related enhancements until late 2014 even if the Commission had accepted the August 2011 Filing without conditions. Accordingly, allowing the NYISO an additional sixty days to prepare a well-reasoned compliance filing that has the benefit of stakeholder input should not prejudice any entity.

Granting the NYISO's requested extension would also be consistent with the approach that the Commission has taken in other ISO/RTO Order No. 745 compliance proceedings. In general, ISOs/RTOs have been given ninety, not thirty, days to comply with major compliance directives related to Order No. 745.⁹ The May 16 Order did not identify, and the NYISO does not believe that there is, any reason why the NYISO should be afforded less time than other ISOs/RTOs were given to make comparable compliance filings.

⁹ See e.g. *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212, at P 2 (2011), *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216, at P 2 (2011), and *ISO New England Inc.*, 138 FERC ¶ 61,042, at P 2 (2012).

III. REQUEST FOR FIVE DAY ANSWER PERIOD AND FOR EXPEDITED ACTION

In Order No. 769,¹⁰ the Commission amended its procedural rules to provide for shortened answer periods to motions for extension of time or requests for expedited action. The Commission found that a five day answer period to such motions struck “an appropriate balance for the need to expedite action on such requests while preserving interested parties ability to respond” because “motions regarding time periods are not controversial or complex.”¹¹ Accordingly, the NYISO asks that the Commission establish the now standard five day deadline for answers to this motion under Rule 213(d)(1)(i) of the Commission’s Rules of Practice and Procedure.¹²

The NYISO also requests that the Commission expeditiously issue an order granting this motion as soon as possible after the close of the five-day answer period and no later than Monday, June 17, 2013, *i.e.*, the date that the NYISO’s compliance filing is currently due. Good cause for expedited action exists because the deadline established by the May 16 Order is fast approaching and the NYISO only recently concluded that it would be impossible for it to meet that deadline. Until the Commission acts on this motion, neither the NYISO nor its stakeholders will have certainty regarding the time available to develop and submit a compliance filing in this proceeding. As noted above, granting the extension would enable the NYISO to work on compliance issues with its stakeholders and is more likely to produce a complete filing that raises fewer disputed issues. Expedited action granting this request will allow that effort to proceed in an orderly fashion as soon as possible.

¹⁰ *Filing of Privileged Materials and Answers to Motions*, Order No. 769, 141 FERC ¶ 61,049 (2012).

¹¹ Order No. 769 at P 85.

¹² 18 C.F.R. §385.213(d)(1)(i) (2012).

IV. CONCLUSION

For the reasons specified above, the NYISO respectfully requests that the Commission:

(i) grant its request for a brief extension of time so that it may make the compliance filing mandated by the May 16 Order no later than August 14, 2013; (ii) establish a five day period for answers to this motion, consistent with the recent changes to the Commission's procedural rules; and (iii) act expeditiously and issue an order granting this motion no later than June 17, 2013.

Respectfully submitted,

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

June 6, 2013

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 (2012).

Dated at Washington, D.C. this 6th day of June 2013.

/s/ Ted J. Murphy

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