

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

<b>Independent Power Producers</b>	)	
<b>of New York, Inc.,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL13-62-000</b>
	)	
<b>New York Independent System Operator, Inc.</b>	)	
	)	
<b>Respondent.</b>	)	

**REQUEST FOR LEAVE TO ANSWER AND ANSWER  
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”), respectfully seeks leave to answer, and submits this answer to, two aspects of the *Motion for Leave to Answer and Limited Answer of TC Ravenswood, LLC* (“TCR Answer”). TC Ravenswood, LLC (“TCR”) filed the TCR Answer on June 14, 2013 in response to the NYISO Answer<sup>2</sup> in this proceeding.

This answer focuses solely on: (i) correcting the TCR Answer’s mischaracterization of statements in the *Affidavit of David B. Patton* (“Patton Affidavit”) that was attached to and supported the NYISO Answer;<sup>3</sup> and (ii) addressing erroneous reasoning in the *Supplemental Affidavit of Roy J. Shanker, PH.D. on Behalf of TC Ravenswood, LLC* (“Supplemental Shanker Affidavit”). To be clear, the NYISO’s silence regarding the other assertions in the TCR Answer,

---

<sup>1</sup> 18 C.F.R. § 385.213 (2013).

<sup>2</sup> *Answer of the New York Independent System Operator, Inc.*, Docket No. EL13-62-000 (May 30, 2013).

<sup>3</sup> Dr. Patton is the President of Potomac Economics, Ltd., the independent Market Monitoring Unit (“MMU”) for the NYISO. The Patton Affidavit is referred to in the Answering Affidavit of Dr. Patton attached hereto (“Patton Answering Affidavit”) as the “May 20 Affidavit.”

or in the *Request for Leave to Answer and Answer of the Independent Power Producers of New York, Inc.* (“IPPNY Answer”),<sup>4</sup> should not be construed as acceptance of them. The NYISO Answer, including the Patton Affidavit, has already demonstrated that the *Complaint Requesting Fast-Track Processing* by the Independent Power Producers of New York, Inc. (“Complaint”) that initiated this proceeding has no merit. There is thus no basis for granting any of the relief requested by the Complaint, or by TCR,<sup>5</sup> in this proceeding.

## **I. REQUEST FOR LEAVE TO ANSWER**

The Commission has discretion under Rule 213(a)(2) to accept answers to pleadings styled as answers. The Commission has accepted such answers when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.<sup>6</sup> The Commission should accept this filing because it will help to clarify complex issues and will correct misleading statements in the TCR Answer.

---

<sup>4</sup> The NYISO notes that the IPPNY Answer cites three Commission rulings that it alleges support its straw claim that the NYISO has asserted “that units needed for reliability should be exempt from measures intended to prevent the artificial suppression of ICAP prices.” IPPNY Answer at 6-7. None of the cited cases are relevant to this proceeding. Specifically, *Devon Power, LLC*, 103 FERC ¶ 61,082 (2003), and *California Independent System Operator, Inc.*, 142 FERC ¶ 61,248 (2013) involved Commission directives that capacity markets be developed to reduce reliance on non-market contract mechanisms. These Orders did not speak to how units needed for reliability purposes should offer into such markets. In *PJM Interconnection, L.L.C.*, 143 FERC ¶61,090 (2013) (“PJM”), the Commission rejected a proposal for a “limited reliability exception” from mitigation in an organized market because any unit that would have cleared under it could have also cleared without it. *See* PJM at P 59, n. 42.

<sup>5</sup> The NYISO notes that TCR’s new request that the Commission use this proceeding to make sweeping changes to the NYISO capacity market design, *see* TCR Answer at 3, 14, is unsubstantiated and is also irreconcilable with the Complaint’s request for fast-track processing in this proceeding. *See, e.g., Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999) (fast track processing is not suited for “complex issues” including specifically when a complaint seeks changes to tariff provisions).

<sup>6</sup> *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 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 . . .”).

## II. ANSWER

### A. THE TCR ANSWER IS INACCURATE AND MISLEADING WHEN IT CLAIMS THAT DR. PATTON IDENTIFIED A “MARKET DESIGN FLAW” IN THIS PROCEEDING

The TCR Answer claims that the Patton Affidavit “expressly acknowledges”<sup>7</sup> that “there are flaws in the NYISO market design in that the NYISO markets fail to adequately express certain reliability constraints . . . .”<sup>8</sup> It asserts that it is “undisputed” that the “underlying cause resulting in the need for the Cayuga and Dunkirk [Reliability Support Services Agreement (“RSSAs”)] is a flaw in the NYISO markets . . . .”<sup>9</sup> The TCR Answer contains several other references to Dr. Patton’s supposed “acknowledgement.”<sup>10</sup> It even suggests that the existence of the alleged “flaw” means that the NYISO lacks “a properly-functioning market that adequately reflects reliability constraints and compensates the entities that resolve those constraints” and that the alleged absence of such a market justifies what TCR describes as its “creative solutions.”<sup>11</sup>

TCR points to certain statements in the Patton Affidavit as the basis for his supposed “acknowledgement.” Dr. Patton actually: (i) explained that “it is well-recognized that none of the ISO/RTO-administered markets fully reflect all reliability requirements and therefore do not set prices that reflect the full needs of the system”;<sup>12</sup> and (ii) referred to his prior suggestions that

---

<sup>7</sup> TCR Answer at 2.

<sup>8</sup> TCR Answer at 1.

<sup>9</sup> TCR Answer at 4.

<sup>10</sup> See TCR Answer at 13 (“consistent with the broadly acknowledged premise that there is a serious flaw in the market design, *i.e.*, the failure to recognize a local transmission constraint . . . .”); 14 (referring to the NYISO’s supposedly “admittedly flawed market”).

<sup>11</sup> TCR Answer at 11.

<sup>12</sup> TCR Answer at 4; *quoting* Patton Affidavit at P 19.

the NYISO take additional steps to more fully reflect planning and reliability requirements in capacity market prices.<sup>13</sup>

TCR's characterization of the Patton Affidavit is neither accurate nor plausible. The Patton Affidavit was clear that it was describing an issue, *i.e.*, the existence of unexpressed reliability constraints that exists in all ISO/RTO-administered markets. As illustrated above, the TCR Answer quotes the very language from the Patton Affidavit that makes it obvious that Dr. Patton was referring to a universal market design imperfection, not a NYISO-specific "flaw."<sup>14</sup> The fact that the Commission's regulations<sup>15</sup> and the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff")<sup>16</sup> both require that Market Monitoring Units<sup>17</sup> refer even "perceived" market design flaws to the Commission, reinforces the fact that the Patton Affidavit was clearly not identifying a "market design flaw" and further illustrates the implausibility of TCR's interpretation that it was.

Nevertheless, to avoid any possible doubt on this point, the attached Answering Affidavit of Dr. David B. Patton ("Answering Patton Affidavit") expressly confirms that Dr. Patton "does not believe the existence of an unexpressed reliability constraint constitutes a flawed market"<sup>18</sup>

---

<sup>13</sup> TCR Answer at 4-5; *quoting* Patton Affidavit at PP 38-39.

<sup>14</sup> The Patton Affidavit was clear that perfect consistency between market and reliability requirements is an ideal goal not a necessary feature of a sound market design. *See* Patton Affidavit at P 18 ("[i]deally, the market requirements should be fully consistent with the reliability requirements of the system").

<sup>15</sup> *See* 18 C.F.R. § 35.28(g)(3)(v).

<sup>16</sup> Services Tariff, Attachment O at § 30.4.5.4.

<sup>17</sup> Section 35.28(b)(7) of the Commission's regulations defines a "Market Monitoring Unit" as the "the person or entity responsible for carrying out the market monitoring functions that the Commission has ordered Commission-approved independent system operators and regional transmission organizations to perform."

<sup>18</sup> Answering Patton Affidavit at P 13.

and that the “design of the NYISO market is sound.”<sup>19</sup> Dr. Patton’s confirmation unequivocally refutes the TCR Answer’s assertions that there is an “acknowledged” flaw in the NYISO market design. It also undermines the foundation of every TCR argument that is built on this false premise.

**B. THE SUPPLEMENTAL SHANKER AFFIDAVIT’S ARGUMENT FOR EXCLUDING RSSA UNITS FROM THE CAPACITY MARKET IS DEVOID OF MERIT**

The Supplemental Shanker Affidavit begins by expressing agreement with Dr. Patton’s supposed recognition of “fundamental deficiencies in the NYISO market design.”<sup>20</sup> It proceeds to argue that the proper way to address these imagined deficiencies is to “look at the system as it will exist after the ‘best fix’ is implemented and represent the associated RSSA units in the interim in the same manner to produce the same pricing as would be expected once the ‘fix’ is in place.”<sup>21</sup> According to the Supplemental Shanker Affidavit, Dr. Patton erred to the extent that he does not address the “differences inherent in . . . three potential end state results and their implications.”<sup>22</sup> Dr. Shanker argues that the “right representation in the market is to mimic the amount of capacity that would exist with the end state transmission ‘fix’ in place overnight” *i.e.*, to remove RSSA units from the capacity market supply.<sup>23</sup>

The NYISO has explained above that Dr. Patton in fact does not agree with Dr. Shanker’s view that there are “fundamental deficiencies” in the NYISO capacity market design. The Answering Patton Affidavit explains that Dr. Shanker is also wrong to claim that “whether the units receiving [RSSAs] are included in the capacity markets should depend on the appropriate

---

<sup>19</sup> Answering Patton Affidavit at P 14.

<sup>20</sup> Supplemental Shanker Affidavit at P 4.

<sup>21</sup> *Id.* at P 7.

<sup>22</sup> *Id.* at P 14.

<sup>23</sup> *Id.* at P 17.

end state solution for satisfying the reliability constraint.”<sup>24</sup> Dr. Patton emphasizes that “[t]he fact remains that the end state solution can take years to be implemented, particularly in the case of transmission upgrades. In the meantime, capacity prices in the broader market should reflect the actual supply capacity in the market, which includes the resources under the RSSAs.”<sup>25</sup> Dr. Shanker’s “solution” would thus unreasonably overstate Rest-of-State capacity prices by excluding RSSA units from the market.<sup>26</sup> Dr. Patton concludes that allowing RSSA units to clear in the market “does not reflect a distortion of the prices, but merely mimics the market results one would see in the [Rest-of-State] market if the unexpressed reliability need were modeled in the market.”<sup>27</sup> Accordingly, Dr. Shanker’s argument should be rejected.

### **III. CONCLUSION**

For the reasons specified above, the NYISO respectfully requests that the Commission accept this answer and renews its request that the Commission deny the Complaint, including both of its alternative requests for relief, and likewise deny all of the requests made by TCR.

Respectfully submitted,

/s/ Ted J. Murphy  
Hunton & Williams, LLP  
Counsel for  
New York Independent System Operator, Inc.

June 28, 2013

---

<sup>24</sup> Answering Patton Affidavit at P 4.

<sup>25</sup> *Id.* at P 9.

<sup>26</sup> *Id.* at P 10.

<sup>27</sup> *Id.* at P 11.

**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 (2013).

Dated at Washington, D.C. this 28th day of June 2013.

/s/ Catherine Karimi

Catherine Karimi  
Sr. Professional Assistant  
Hunton & Williams LLP  
2200 Pennsylvania Ave, NW  
Washington, DC 20037  
Tel: (202) 955-1500  
Fax: (202) 778-2201  
E-mail: ckarimi@hunton.com

**JUNE 28, 2013**



**I. Purpose and Summary**

1. My name is David B. Patton. I am an economist and the President of Potomac Economics. Our offices are located at 9990 Fairfax Boulevard, Fairfax, Virginia 22030. Potomac Economics is a firm specializing in expert economic analysis and monitoring of wholesale electricity markets. Potomac Economics serves as the Market Monitoring Unit (“MMU”) for the New York Independent System Operator (“NYISO”). Potomac Economics serves in a substantially similar role for ISO New England (“ISO-NE”), the Midcontinent Independent System Operator, Inc., and the Electric Reliability Council of Texas.
2. I filed an affidavit previously in this case (“May 30 Affidavit”). The May 30 Affidavit supported the May 30, 2013 *Answer of the New York Independent System Operator, Inc.* Docket No. EL13-62-000 (May 30, 2013) (“NYISO Answer”) to the *Complaint Requesting Fast-Track Processing* (“Complaint”) that started this proceeding. My May 30 Affidavit explained that the Complaint was based on flawed economic assertions and recommended that the Complaint be rejected.<sup>1</sup>
3. The purpose of this answering affidavit is to respond to two specific points made in the *Motion for Leave to Answer and Limited Answer of TC Ravenswood, LLC* (“TCR Answer”) and in the *Supplemental Affidavit of Roy J. Shanker, Ph.D. on Behalf of TC Ravenswood, LLC* that is attached thereto. My silence on other arguments made in the TCR Answer or in the *Request for Leave to Answer and Answer of the Independent Power Producers of New York, Inc.* or in the *Supplemental Affidavit of Mark D. Younger* (“Supplemental Younger Affidavit”) that accompanies it should not be construed as agreement with them.<sup>2</sup> To be clear, I continue to believe that the Complaint lacks merit.

---

<sup>1</sup> May 30 Affidavit at P 15.

<sup>2</sup> I would note that P 13 of the Supplemental Younger Affidavit mischaracterizes my May 30 Affidavit when it claims that I argued that “units are economic *because* they are receiving out of market payments . . .” (emphasis added). My May 30 Affidavit clearly expressed my view that the fact that certain units are receiving payments under an RSSA does not mean that they are uneconomic and did not suggest that receiving RSSA payments alone somehow makes uneconomic units economic.

**II. Efficient Capacity Pricing in the Presence of an “Unexpressed” Reliability Constraint**

4. Dr. Shanker argues in his affidavit that whether the units receiving Reliability Support Service Agreements (“RSSAs”) are included in the capacity market should depend on the appropriate “end state” solution for satisfying the reliability constraint. I will explain in this section why this is not correct.
5. Dr. Shanker’s three possible end state solutions for satisfying the reliability requirement are:
  - Transmission upgrade resolves the requirement at the lowest cost;
  - The unit(s) receiving the RSSA are uniquely situated to most efficiently satisfy the requirement; or
  - Multiple units together satisfy the requirement.
6. Dr. Shanker argues that the resources in question should only clear in the NYISO market under the second end state, asserting that these units would distort the NYISO’s capacity prices if either the first or third end state is the appropriate solution. This is simply not true.
7. As I explained in my May 30 Affidavit, the most efficient capacity price in the broader market is the price that would prevail if the unexpressed constraint were modeled. Regardless of which of the three end states would prevail over the long term, the units would clear in the short-term until the end state is realized.
8. For example, when transmission expansion in or into a zone is economic that would contribute to meeting the requirements for any modeled zonal requirement, the local resources needed to satisfy the requirement in the interim will clear the market. Because these resources will also contribute to satisfying the NYCA requirements, they will affect the Rest-of-State (“ROS”) prices. It is hard to imagine that Dr. Shanker would argue that the resulting short-term prices in this case are artificially distorted.
9. Moving from this example where the reliability need is modeled to the case where the requirement is not modeled and an RSSA is necessary does nothing to change whether

these units should be recognized in the determination of the capacity prices in the broader market. The fact remains that the end state solution can take years to be implemented, particularly in the case of transmission upgrades. In the meantime, capacity prices in the broader market should reflect the actual supply capacity in the market, which includes the resources under the RSSAs.

10. I would note that I agree with Dr. Shanker that the third end state listed above, *i.e.*, the one in which multiple units together satisfy the reliability need, will result in under compensation of all of the non-RSSA resources that can satisfy the need. This issue could be addressed in some cases by modeling the reliability need in the market. However, the fact that this subset of resources may be undercompensated does not indicate that it is reasonable to overstate the ROS capacity prices by excluding the RSSA units from the market.
11. Hence, regardless of the end state, the RSSA units would clear in the interim until the end state is realized, and affect capacity prices in the broader market. This does not reflect a distortion of the prices, but merely mimics the market results one would see in the ROS market if the unexpressed reliability need were modeled in the market.

### **III. Assertions that the NYISO Capacity Market is Flawed**

12. The TCR Answer claims that my May 30 Affidavit “expressly acknowledges”<sup>3</sup> that “there are flaws in the NYISO market design in that the NYISO markets fail to adequately express certain reliability constraints . . .”<sup>4</sup> It asserts that it is “undisputed” that the “underlying cause resulting in the need for the Cayuga and Dunkirk RSSAs is a flaw in the NYISO markets . . .”<sup>5</sup> It even suggests that the existence of the alleged “flaw” means that the NYISO lacks “a properly-functioning market that adequately reflects reliability constraints and compensates the entities that resolve those constraints.”

---

<sup>3</sup> TCR Answer at 2.

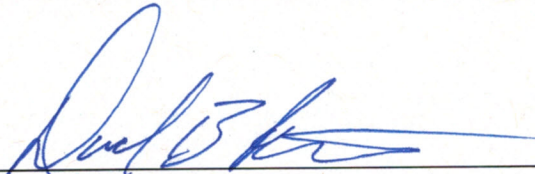
<sup>4</sup> TCR Answer at 1.

<sup>5</sup> TCR Answer at 4.

13. I want to clarify that I do not believe the existence of an unexpressed reliability constraint constitutes a flawed market. If that were the case, all RTO markets would have to be considered flawed because no market exhibits complete correspondence between the system's reliability needs and its market requirements.
14. The design of the NYISO market is sound. Although the existence of unexpressed reliability constraints can reduce the economic performance of the market, this does not constitute a flaw in the design of the market. One of our top priorities in all of the ISOs/RTOs we monitor is to identify differences between their reliability requirements and their market requirements, and to recommend improvements to reduce these differences. Identifying and implementing these improvements is a process that will continue over the long-term.
15. This concludes my affidavit.

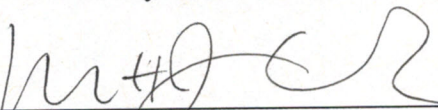
**ATTESTATION**

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
David B. Patton

June 28, 2013

Subscribed and sworn to before me  
this 28th day of June, 2013.

  
\_\_\_\_\_  
Notary Public

My commission expires: 11/30/13

**MATTHEW JAMES CARRIER**  
Notary Public  
City/County of Fairfax  
Commonwealth of Virginia  
Notary registration number - 7233763  
My commission expires - Nov. 30, 2013