

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

New York Independent System Operator, Inc.
Complainant,

v.

Astoria Energy LLC
Respondent.

Docket No. EL07-18-000

**RESPONSE OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO THE ANSWER OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

The New York Independent System Operator, Inc. (“NYISO”) urges the Commission not to consider Consolidated Edison Company of New York, Inc.’s (“Con Edison”) answer filed in this docket on February 16, 2007 (the “Con Edison Answer”) because it contains arguments that are outside the scope of the NYISO’s complaint against Astoria Energy LLC (“Astoria”), inaccurate statements about the NYISO’s tariff requirements and Installed Capacity (“ICAP”) process, and an untimely argument concerning the NYISO’s requested remedy and limited tariff waiver in the complaint.

I. Response to Inaccurate Statements Concerning Certification

The Commission should accept this response in order to correct inaccurate statements in Con Edison’s February 16, 2007 answer in this docket.¹ Specifically, Con Edison (and the

¹ The NYISO recognizes that the Commission normally discourages responses to pleadings such as protests and comments. The Commission has previously allowed answers, however, when they correct inaccurate statements, help to clarify complex issues, provide additional information that will assist the Commission, or are otherwise helpful in the development of the record in a proceeding. 18 C.F.R. § 385.213; *Southern Minnesota Municipal Power Agency*, 57 FERC ¶ 61,136 (1991); *see, e.g., New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting NYISO answer to protests because it provided information that aided the

affidavit attached to it) misstate the NYISO's role in the ICAP certification process by stating that "[i]t is the NYISO's responsibility to certify the capacity of generators in a bilateral transaction." Con Edison does not cite to any such requirement in the Services Tariff² or the ICAP Manual, and the NYISO is not aware of any such requirement.³ Con Edison continues down this path by stating that it relied on the NYISO's "certification" of Astoria's capacity in the ICAP Automated Market System ("AMS") when confirming its bilateral transaction with Astoria for the month of May, 2006.⁴

The NYISO does not, in fact, certify generator capacity for bilateral transactions in the ICAP AMS. Rather, it is very clearly stated in the ICAP Manual and the ICAP AMS Users Guide that Market Participants (Astoria and Con Edison in this instance) certify their bilateral transactions to the NYISO. Load Serving Entities ("LSEs") can meet their capacity obligations through bilateral transactions, but the LSE must certify such a capacity purchase to the NYISO:

Prior to each Obligation Procurement Period, LSEs must certify to the NYISO demonstrating the amount of Unforced Capacity they have obtained for the upcoming Obligation Procurement Period. The certification shall require LSEs to: ... (iii) identify any Installed Capacity Supplier from which they have procured Unforced Capacity pursuant to Bilateral Transactions. ... To the extent an LSE certified that it is procuring Unforced Capacity through a Bilateral Transaction ..., the Installed Capacity Supplier to that Bilateral Transaction must also confirm to the NYISO that it is obligated to supply UCAP to the LSE⁵

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 . . .").

² Unless otherwise specified, capitalized terms have the meanings specified in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") or its Installed Capacity Manual ("ICAP Manual").

³ Con Edison Answer at 9.

⁴ *Id.*

⁵ Installed Capacity Manual, § 3.4, at 3-4 (Aug. 2006), available at <http://www.nyiso.com/public/products/icap/manuals.jsp> (last visited Feb. 28, 2007) ("ICAP Manual"); see also Services Tariff, § 5.13.1 ("LSEs holding Unforced Capacity which they want credited against their LSE Unforced Capacity Obligations must certify such Unforced Capacity

The mechanics of this LSE certification in the ICAP AMS are described in the ICAP Automated Market User's Guide.⁶

If the LSE is using bilateral transactions as part of this certification, the user's guide explains the mechanics of one party to a bilateral transaction entering the transaction into the ICAP AMS and the other party to the transaction confirming it.⁷ The NYISO is not a party to such transactions, and has no part in entering or confirming the transaction in the ICAP AMS. Rather, those actions are undertaken by Market Participants. Con Edison has not identified any requirement in either the Services Tariff, ICAP Manual, or the ICAP Automated Market User's Guide for the NYISO to "certify" a generator's capacity for a bilateral transaction in the ICAP AMS.

After a bilateral transaction is confirmed by both parties in the ICAP AMS, the ICAP Supplier must satisfy this obligation, which may be done by allocating purchased capacity or capacity from a resource (*e.g.*, a generating unit) using the ICAP AMS.⁸ If the ICAP Supplier does not satisfy all of its obligations during the certification process (which takes place prior to the ICAP Spot Market Auction), then capacity will be purchased in the ICAP Spot Market Auction to make up for this shortfall.⁹

when submitting their Installed Capacity certifications."); ICAP Manual § 5, at 5-1 ("Load Serving Entities and Installed Capacity Suppliers may also purchase or sell Unforced Capacity through Bilateral Transactions. Load Serving Entities holding Unforced Capacity, which they want credited against their LSE Unforced Capacity Obligations, must certify such Unforced Capacity.").

⁶ ICAP Automated Market User's Guide, § 4 (June 2006), *available at* http://www.nyiso.com/public/webdocs/products/icap/ucap/icap_automation/iamug_1_1.pdf (last visited Feb. 28, 2007).

⁷ *Id.*, § 4.2; ICAP Manual §§ 3.4, 4.7.

⁸ ICAP Automated Market User's Guide, § 4.6.

⁹ Services Tariff, § 5.14.2

In this case, Astoria entered its bilateral transaction with Con Edison into the ICAP AMS and Con Edison confirmed it.¹⁰ The NYISO had no active role in entering or confirming this transaction. It also appears that Astoria used generating units in the ICAP AMS to satisfy its obligation that could not, as Astoria tacitly admitted in its answer, provide the capacity. It was Astoria's erroneous certification to the NYISO that allowed Astoria to use its units to satisfy the obligation—the use of “projected” production data instead of “actual” production data—not an erroneous certification of Astoria's capacity in the ICAP AMS by the NYISO. As outlined in the NYISO's complaint, when an ICAP Supplier sells capacity that it could not in fact provide, the Services Tariff requires an ICAP Supplier to pay a deficiency charge.

The NYISO respectfully requests that the Commission not consider the Con Edison Answer at all. The Con Edison Answer delves into topics that do not need to be addressed in order to grant the relief requested in the NYISO's complaint. This case simply calls for an application of the Services Tariff language requiring Astoria to pay a deficiency charge for capacity that it could not provide, and turns on two facts: (1) Astoria certified 500 MW for the May 2006 period based on nameplate or design specifications and not production data; and (2) the only available production data for the Astoria unit was the Plant Information (“PI”) data at the MW levels cited in the Complaint. What Con Edison did during the certification process preceding the ICAP Spot Market Auction is completely irrelevant to what the Commission needs to decide in order to grant the complaint. Further, Con Edison's inaccurate statements in the

If the Installed Capacity Supplier does not cover such shortfall or if it does not certify to the ISO in a timely manner, the ISO shall prospectively purchase Unforced Capacity on behalf of that Installed Capacity Supplier in the appropriate ICAP Spot Market Auction or through post ICAP Spot Market Auction Unforced Capacity purchases to cover the shortfall.

¹⁰ Con Edison Answer, at 4, 9-13.

answer (and the accompanying affidavit thereto) do nothing but confuse the record in this case and will not assist the Commission in its decision.

II. Con Edison Failed To Object To The Requested Relief In A Timely Manner

The NYISO respectfully requests that the Commission not consider the argument raised in section IV of the Con Edison Answer because it was not raised in a timely manner. The NYISO filed its complaint against Astoria on December 1, 2006. The complaint requested a limited tariff waiver to assess the deficiency charge against Astoria at one times the applicable market clearing price instead of one and one-half times that price and also to restore the relevant parties to the position they would have been in but for Astoria's erroneous certification. Specifically, the NYISO requested that Astoria pay the deficiency charge and that money go to another capacity supplier that would have otherwise sold additional capacity in the May 2006 ICAP Spot Market Auction. The Commission granted an extension of time to answer the complaint until February 1, 2007.

On January 2, 2007, Con Edison filed a motion to intervene in this case that specifically acknowledged the NYISO's requested waiver and remedy:

Further, the NYISO requested the Commission to use its remedial authority to restore market participants to the position they would have occupied if SCS Astoria had adhered to the tariff standards for ICAP certification.

* * *

Specifically, the NYISO requested that the Commission issue an order: ...
(3) Granting a limited waiver of the Services Tariff and ordering SCS Astoria to pay a modified deficiency charge; and
(4) Directing the NYISO to use the deficiency charge received from SCS Astoria to pay affected market participants for the capacity that should have been sold in the May 2006 ICAP Spot Market Auction.¹¹

¹¹ Motion to Intervene of the New York Transmission Owners, Docket No. EL07-18-000, at 2 (Jan. 2, 2007).

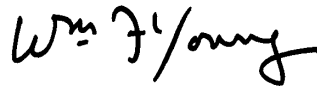
In that filing, Con Edison acknowledged the NYISO's requested remedy and stated that it had a direct and substantial interest in the case. Con Edison did not raise any concerns with the requested waiver or remedy in the complaint before February 1, 2007.

On February 16, 2007, Con Edison submitted a pleading in response to comments by Keyspan-Ravenswood, LLC in this docket (the Con Edison Answer). At the end of that pleading, Con Edison argued for the first time in the case that the NYISO's requested waiver and remedy were not appropriate. This was over two months after the complaint was filed and weeks after the deadline to answer the complaint. The Commission should not consider the argument in section IV of the Con Edison Answer because Con Edison specifically acknowledged the relief requested in the complaint in its motion to intervene and failed to raise this argument in a timely manner in a protest or comments.

III. Conclusion

For the foregoing reasons, the NYISO respectfully requests that the Commission not consider the Con Edison Answer because it contains arguments that are outside the scope of the complaint and inaccurate statements concerning the NYISO's tariff responsibilities. The NYISO also respectfully requests that the Commission not consider section IV of the Con Edison Answer because Con Edison failed to raise its concern in a timely manner.

Respectfully submitted,



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Dated: March 5, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on the official service lists compiled by the Secretary in these proceedings in accordance with 18 C.F.R. § 285.2010 (2006).

Dated at Washington, DC this 5th day of March, 2007.

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