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November 15, 2007

BY ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: 330 Fund I, L.P. v. New York Independent System Operator, Inc.; Docket
No. EL07-78-001; Motion for Leave to Answer and Answer of the New York
Independent System Operator, Inc.**

Dear Ms. Bose:

Enclosed for electronic filing in the referenced docket is the Motion for Leave to Answer and Answer of the New York Independent System Operator, Inc.

If there are any questions concerning this filing, please call me at (202) 661-2212.

Very truly yours,

/s/ Daniel R. Simon

Daniel R. Simon
Counsel for
New York Independent System Operator, Inc.

Enclosures

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

330 Fund I, L.P., <i>Complainant,</i> v. New York Independent System Operator, Inc. <i>Respondent.</i>)))))))	Docket No. EL07-78-001
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**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK
INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 and § 385.213 (2007), the New York Independent System Operator, Inc. (the “NYISO”) submits this Motion for Leave to Answer and Answer to the October 31, 2007 rehearing request (“Rehearing Request”) of 330 Fund I, L.P. (“330 Fund”).

I. NYISO MOTION FOR LEAVE TO ANSWER

Because an answer is not normally permitted in response to a rehearing request,¹ the NYISO moves, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2006), for leave to accept this answer. Although the Commission’s rules do not normally permit answers to rehearing requests, the Commission often waives this prohibition for good cause shown.² The Commission has found good cause, for instance, when an answer

¹ See 18 C.F.R. § 385.213(a)(2) (2006); 18 C.F.R. § 385.713(d)(1).

² See, e.g., *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,007 at P 10 (2007).

provides information that assists the Commission in its decision-making process,³ narrows or clarifies important issues,⁴ or responds to a rehearing request that raises an issue of fact.⁵ This answer satisfies this test for good cause because the NYISO provides herein information that clarifies its position on a key issue and as to how it believes the Commission should address another of the issues presented in the Rehearing Request. In particular, the NYISO submits this concise answer, not to respond to all of 330 Fund's erroneous arguments, but to address several Rehearing Request misrepresentations. The Commission has accepted answers to rehearing requests that respond to such misrepresentations.⁶

II. ANSWER OF THE NYISO

The October 1 Order correctly concluded that 330 Fund failed to demonstrate that the NYISO had violated any Tariff obligations, and the Rehearing Request does not raise any arguments that warrant a different response. The NYISO submits this response for a very specific reason, and with a narrow scope: the Rehearing Request misrepresents or mischaracterizes the NYISO's positions (and its Open Access Transmission Tariff⁷) in several key respects, and this response sets the record straight.

³ See, e.g., *id.*; *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210 at P 17 (2005).

⁴ See, e.g., *Consumers Energy Co.*, 110 FERC ¶ 61,317 at P 13 n.16 (2005); *Sound Energy Solutions*, 107 FERC ¶ 61,263 n.37 (2004).

⁵ See, e.g., *SFPP, L.P.*, 117 FERC ¶ 61,275 at P 2 (2006).

⁶ See, e.g., *id.*; *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210 at P 10 (summarizing the Power Connecticut answer accepted by the Commission as responding to a "misleading" rehearing request) and P 17 (accepting Power Connecticut answer to rehearing request); *Northwest Pipeline Corp.*, 95 FERC ¶ 61,029 at p. 61,092 (2001) ("Northwest urges the Commission to waive its procedural rules prohibiting answers to rehearing requests because, it alleges, PAGUS' request for rehearing contains certain misleading statements. The Commission may waive its procedural rules for good cause and will do so here.").

⁷ The Open Access Transmission Tariff is referred to herein as the "Tariff."

A. The 330 Fund’s Claim That the NYISO Violated Attachment X Relies on Several Key Misrepresentations and/or Mischaracterizations

330 Fund’s contention that the Commission erred by failing to find that the NYISO violated Attachment X relies on several misrepresentations and/or mischaracterizations. The NYISO briefly addresses each below.

1. 330 Fund Mischaracterizes the Tariff by Advancing a Non-Existent Three-Factor Test, and Seeks to Muddy the Clear Differences in Treatment – Under the Tariff and Commission Precedent – Between Existing Generators and Pending Interconnection Requests

330 Fund argues that the October 1 Order applied the incorrect standard when concluding that the NYISO appropriately determined that the POI change was not material. 330 Fund states that:

Under the tariff, a change to an existing (i.e., previously interconnected) facility is material if: (a) there is *any* modification to a point of interconnection once the project is complete, *or* (b) it materially impacts the operating characteristics of the facility being modified *or* (c) it materially impacts other projects in the interconnection queue.⁸

330 Fund’s statement asserts that each of the listed criteria applies to “existing (i.e., previously interconnected)” facilities. The statement is a misleading characterization of the Tariff requirements. Notably, the statement does not appear anywhere in the Tariff as presented by 330 Fund. Instead, 330 Fund has pieced together this three-factor test from different sections of the Tariff and other unspecified sources. In so doing, 330 Fund ignores the clear differences in treatment under the Tariff, and Commission precedent, for existing generators versus pending interconnection requests, which NYISO explained in its July 19, 2007 answer to the Complaint

⁸ Rehearing Request at 12-13 (emphasis supplied).

(“NYISO Answer to Complaint”)⁹ and which the Commission reviewed and confirmed in its October 1 Order.¹⁰

The October 1 Order properly is founded (at P 32) on the principle that Order No. 2003 does not apply to “existing generators already interconnected to the transmission grid where there is no proposed increase in output or material modifications to physical or operating characteristics.”¹¹ This principle is (as recognized indirectly by 330 Fund¹²) implemented through the definition of “Interconnection Request” contained in Order No. 2003 and included in the Tariff’s Attachment X. Thus, an existing generator must submit an Interconnection Request only if it increases its capacity or “make[s] a material modification to the operating characteristics” of the generator.

Having concocted a three-factor test not established by the Tariff, 330 Fund argues that the Commission erred by not evaluating the first two factors.¹³ Critical to 330 Fund’s position concerning the first two factors is its argument that the language in Section 4.4.3 governs whether an existing generator is required to submit an Interconnection Request and that, if applied, this Section requires a finding that a change in POI is material.

330 Fund’s position is completely unsupported and circular. The Commission correctly found (in P 32) that Section 4.4.3 is applicable only to pending interconnection requests and to

⁹ NYISO Answer to Complaint at 14-18.

¹⁰ October 1 Order at P 32; *see also id.* at P 33 n.61.

¹¹ October 1 Order at P 32 (quoting from *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,270 at P 12 (2007)).

¹² Rehearing Request at 15.

¹³ *Id.* at 13. Of course, as discussed above, the Commission did apply what 330 Fund identifies as the second factor, which evaluates whether a change is a material change to the operating characteristics of the existing unit. October 1 Order at P 33.

“new interconnection requests for material changes to the operating characteristics of existing facilities.” The October 1 Order confirms that neither apply here; the change in POI does not fall into the latter category and the NYISO applied the appropriate analytic framework to so conclude.¹⁴ 330 Fund goes to great lengths to argue that one way or another the language of Section 4.4.3 addressing changes to POIs should have been applied to the instant POI change. However, it would be circular to apply a requirement of Order No. 2003 (*i.e.*, Section 4.4.3) in order to determine whether Order No. 2003 should apply at all. The Commission should reject this leaping bootstrap, and especially the attempt to engraft – as required analysis – a series of tests not supported by the Tariff.

2. 330 Fund Misrepresents NYISO’s Position Regarding the Applicability of Section 4.4.3

330 Fund is simply incorrect when it states that Mr. Corey “confirmed the applicability of section 4.4.3 in a Transmission Planning Advisory Subcommittee (‘TPAS’) meeting in which he indicated that section 4.4 governed materiality in the context of the changes in projects.”¹⁵ This same argument was raised by 330 Fund in its August 3, 2007 Motion for Leave to Answer, and again misrepresents the NYISO’s position. In NYISO’s August 17, 2007 Answer to the Motion For Leave to Answer of 330 Fund I, L.P., it explained as follows:

330 Fund simply misreads the meeting minutes. As Mr. Corey notes in his Supplemental Affidavit, the focus of the discussion was on interconnection projects already in the queue, and his remarks were responsive to a question about such pending projects.

¹⁴ As demonstrated in Mr. Corey’s testimony, the NYISO examined whether there were any changes to the capacity or operating characteristics of the Seymour GTs, and considered whether there were any reliability impacts, as well. As noted by the Commission in P 33 of the October 31 Order, reliability impacts could have resulted from a change in operating characteristics, such that the Order No. 2003 procedures should apply to avoid adverse impacts and costs for queued projects.

¹⁵ Rehearing Request at 21 (citing May 3, 2007 TPAS Meeting Minutes at 4).

The statement 330 Fund *omits* from its discussion of the meeting minutes demonstrates this: “Project changes that NYISO determines to be material either result in the Developer withdrawing the proposed changes, or loss of queue position.” As discussed above in the context of the plain language of Attachment X Section 4.4, an existing facility has no “Developer” nor can it lose a “queue position” because it has none.¹⁶

Once again, 330 Fund misreads and, thus, mischaracterizes Mr. Corey’s statements at the May 3, 2007 TPAS meeting.

3. 330 Fund Misrepresents Uncontroverted NYISO Testimony Concerning the Availability of the New Interconnection Procedure

330 Fund’s assertion that the “2001 Criteria ... were not posted on the NYISO’s website until 2007”¹⁷ misstates the operative facts in the record, through ignoring the response the NYISO provided in uncontroverted testimony accompanying its July 19 answer to the Complaint. Specifically, NYISO witness Steven Corey stated that the “New Interconnection Procedure was recently posted on the NYISO website for public availability (*it was always available to NYISO governance committee members*) at http://www.nyiso.com/public/services/planning/interconnection_studies_process.jsp.”¹⁸ The October 1 Order thus appropriately recognized that the information was previously available to market participants on the NYISO’s website, and that the information was simply “consolidated”

¹⁶ Answer to the Motion for Leave to Answer of 330 Fund I, L.P., and Response of the New York Independent System Operator, Inc. at 12 (filed Aug. 17, 2007) (“NYISO August 17 Answer”) (footnotes omitted).

¹⁷ Rehearing Request at 22.

¹⁸ NYISO Answer to Complaint, Exhibit B (Corey Affidavit) at ¶ 6 (emphasis added).

on the NYISO's website in 2007.¹⁹ These facts and findings refute 330 Fund's other allegations that the information was "not properly posted."²⁰

4. 330 Fund Twists the NYISO's Statements Regarding its Conduct of a Materiality Analysis and Attempts to Confuse With Argumentation Regarding an Irrelevant "Alternative" POI for the Seymour GTs

330 Fund states that the NYISO "did not conduct a materiality analysis."²¹ To support its assertion, 330 Fund contends that the "NYISO states that it had never evaluated the interconnection point NYPA proposed in 2006" and cites to the NYISO's Answer to Complaint at page 22, footnote 66.²² 330 Fund's assertion is patently false.

330 Fund seeks to twist the NYISO's statement about the absence of an alternative POI in the 2001 interconnection request into an purported admission that the NYISO *never* (*i.e.*, either in 2001 or 2006) performed a materiality analysis. First, it is irrelevant to this proceeding whether NYISO performed a materiality analysis in 2001 for a POI that was not pertinent at the time. Second, 330 Fund's assertion that the NYISO did not conduct a materiality analysis in 2006 is patently wrong under the record of this case, as the NYISO provided substantial evidence that it did conduct a materiality analysis.²³ The Commission found that such an analysis was conducted and deemed it "reasonable and adequately supported,"²⁴ and 330 Fund presented no evidence suggesting that the materiality analysis was incorrectly performed under the Tariff provisions correctly found by the Commission as governing these events.

¹⁹ October 1 Order at P 34.

²⁰ Rehearing Request at 24.

²¹ *Id.* at 23.

²² *Id.* at 24.

²³ NYISO Answer to Complaint, Exhibit B (Corey Affidavit) at PP 11-14.

²⁴ October 1 Order at P 33.

Third, 330 Fund's discussion of note 66 in NYISO's Answer takes this information out of context and does not provide the entire quote. The entire footnote states as follows:

Id. at ¶ 15. 330 Fund states that if the NYISO "intended in 2001 to allow NYPA to change the interconnection point without further study years later, then the NYISO should have continued to list the NYPA Seymour GTs with an interconnection point in the SI/G Load Pocket as an open project in its interconnection queue because it was still pending." 330 Fund Complaint at p. 20. However, as indicated above, another POI was not contemplated in the original NYPA Interconnection Request. Moreover, following the Seymour GTs' completed interconnection in 2001 (thus it was no longer an "open project"), the NYISO, consistent with its practice at the time, allowed the project to remain listed on the queue list for about one year following the completion of interconnection -- the GTs were removed from the list in October 2002. Exhibit B (Corey Affidavit at ¶ 15).

It is clear on the face of the footnote language that its purpose was simply to respond to 330 Fund's allegation in its Complaint that the original interconnection request sought an alternative interconnection point, which 330 Fund claimed the NYISO intended to allow in the future. In fact, however, as the footnote indicates, this was not the case because no such alternative POI was requested.

B. 330 Fund's Argument That the NYISO Violated Attachment N Relies on Several Key Misrepresentations and Omissions

The NYISO did not violate the Uprate/Derate Table requirements in Section 3.6.6.1 of Attachment N to the Tariff. This provision does not require the NYISO to provide an outage schedule,²⁵ and a review of the Uprate/Derate Table shows that it does not provide information

²⁵ The October 1 Order at P 21 accurately described the NYISO's interpretation of the Uprate/Derate Table: "NYISO argues that the uprate/derate table is a hypothetical tally of the predetermined impacts of transmission outages on interface transfer limits." The NYISO's listing of scheduled outages is prepared pursuant to the provisions of the Outage Scheduling Manual, rather than Attachment N, and is posted (and updated daily) at <http://mis.nyiso.com/public/pdf/os/outages.pdf>. This listing is separate from the Uprate/Derate Table, which does not indicate what lines will be out of service or when. The relevant portions of the Outage Scheduling Manual were
(continued...)

regarding which transmission facilities will be taking outages or when any outages might take place.²⁶ Second, in any event, the NYISO could not have notified market participants about the Line 42231 outages before receiving the outages requests from its transmission owner, Consolidated Edison.²⁷ Although the Commission should reject 330 Fund's arguments on rehearing for a host of reasons, the NYISO limits its response to addressing 330 Fund's misrepresentations.

1. The NYISO Never Agreed With 330 Fund's Incorrect Interpretation of the Uprate/Derate Table

The Rehearing Request contends that the NYISO "essentially agreed" with 330 Fund's description of the purpose of the Uprate/Derate Table. The Rehearing Request contends that the NYISO described the table's purpose "as being a hypothetical tally, a contingency analysis to be used by the Transmission Owners on an 'if' basis to determine the potential impacts of particular interface outages, *when the timing of such impacts is unknown.*"²⁸ Similarly, the Rehearing Request claims that "the purpose of the uprate/derate table, as described by the NYISO and disputed by no party, is to alert Transmission Owners and market participants of potential outages during the relevant period"²⁹

(...continued)

included in Attachment 1 to Exhibit C of the NYISO Answer to Complaint. Schedules indicating the Line 42231 outages were included in Attachment 2 to Exhibit C of the NYISO Answer to Complaint.

²⁶ A sample Uprate/Derate Table was provided to the Commission in NYISO Answer to Complaint, Exhibit D.

²⁷ October 1 Order at P 38.

²⁸ Rehearing Request at 28 (emphasis added). The Rehearing Request provides the following only partial quote from the NYISO Answer to Complaint at 25: "The purpose of the table is to provide the predetermined impacts that each transmission facility outage would have on interface transfer limits, *if* a transmission facility is ultimately scheduled out-of-service" As discussed above, 330 Fund intentionally excluded the part of that sentence that contradicts the representations it makes on rehearing.

²⁹ Rehearing Request at 29.

The NYISO *never* agreed with 330 Fund’s interpretation of the Uprate/Derate Table. As the NYISO explained in its answer to the Complaint: “Section 3.6.6.1 does *not* require, as suggested in the Complaint, the Update/Derate Table to provide an expected transmission facility outage schedule or any information as to what transmission facilities will *in fact* be out-of-service.”³⁰ Despite this unequivocal statement, 330 Fund dissembles by omitting (as identified in italics below) the end of an explanatory sentence included in the NYISO’s answer to the Complaint: “The purpose of the table is to provide the predetermined impacts that each transmission facility outage would have on interface transfer limits, *if a transmission facility is ultimately scheduled out-of-service, and is not meant to reflect transmission facility outages that are actually expected to be scheduled.*”³¹ The NYISO, in fact, explained in its Answer that 330 Fund’s Complaint “grossly misinterprets the meaning, purpose, and requirements of Section 3.6.6.1,”³² and subsequently and squarely refuted 330 Fund’s further attempts to confuse.³³ 330 Fund thus cannot argue in good faith that the NYISO shares its interpretation of the purpose of the Uprate/Derate Table, and 330 Fund’s interpretation is clearly incorrect.

³⁰ NYISO Answer to Complaint at 26.

³¹ *Id.* at 25.

³² *Id.*

³³ Responding to 330 Fund’s unauthorized answer to the NYISO Answer to Complaint, the NYISO stated: “Mr. Garwood’s contention in his supplemental affidavit [on behalf of 330 Fund] that Section 3.6.6.1 dictates the NYISO’s requirements for posting an actual outage schedule simply does not hold water, and he fails to provide any support for this interpretation.” NYISO Response to 330 Answer at 15. Indeed, 330 Fund’s own witness acknowledged that the NYISO disagrees with 330 Fund’s interpretation of the Uprate/Derate Table: “The NYISO asserts that the 330 Fund somehow takes out of context the purpose of updating the Uprate/Derate Table.” 330 Fund Answer to NYISO Answer, Exhibit 2 (Garwood Supplemental Affidavit) at ¶ 10).

2. 330 Fund's Argument Regarding the Purpose of the Uprate/Derate Table is Misleading and Internally Contradictory

The Rehearing Request contends that the content of the Uprate/Derate Table is consistent with the purpose allegedly “described by the NYISO and disputed by no party” as “to alert Transmission Owners and market participants of potential outages during the relevant period”³⁴ because “[t]he listed outages are not limited to those that are expected to occur in the next auction period as is evident from the fact that many outages are listed without change from one auction period to the next.”³⁵

As demonstrated above, the NYISO never agreed with 330 Fund on the purpose of the Uprate/Derate Table, and the inclusion of Line 42231 on the Uprate/Derate Table³⁶ would not have informed TCC auction bidders whether or when that line would be taken out of service. Moreover, 330 Fund's argument is not only misleading, but internally contradictory. On the one hand, 330 Fund argues that the table's purpose is to identify “potential outages during the

³⁴ Rehearing Request at 29.

³⁵ *Id.* at 30.

³⁶ NYISO witness Allen Hargrave explained that Line 42231 is not included in the Uprate/Derate Table because its outage would not impact any interface transfer limits:

Because the purpose of the Uprate/Derate Table, as defined in Section 3.6.6.1, is to identify the impact on interface transfer limits that are more restrictive than the thermal limits of individual transmission facilities, the table lists those transmission facilities that, if out of service, would impact an interface transfer limit. The Uprate/Derate Table does not include transmission facilities in southeastern New York – including Line 42231 – because outages on the underground cable system would only result in thermal limitations. Any and all transmission facilities not listed on the Uprate/Derate Table simply have no interface transfer limits that are more restrictive than the thermal limits of individual transmission facilities, so there would be no reason to include them on the table.

NYISO August 17 Answer, Exhibit E (Hargrave Supplemental Affidavit) at ¶ 6.

relevant period”³⁷ Yet on the next page, 330 Fund argues that “[t]he listed outages *are not limited to those that are expected to occur in the next auction period* as is evident from the fact that many outages are listed without change from one auction period to the next.”³⁸ Beyond this obvious contradiction, how could the Uprate/Derate Table possibly be viewed as a notice of expected outages if it does not change from period to period? If this were the case, many of the key lines in New York would have to have been out of service for most of each year, contrary to the outage schedule (containing out-of-service and return-to-service dates, both absent from the Uprate/Derate Table) posted by the NYISO pursuant to the Outage Scheduling Manual.

The October 1 Order ultimately and correctly concludes that “section 3.6.6.1 does not obligate the NYISO to attempt to predict when outages may occur,”³⁹ and that the NYISO could not with any certainty know – in any event – when a line would be out of service until it receives an outage request.⁴⁰ The Commission should reject 330 Fund’s attempt to misstate the NYISO’s clear position, and to mischaracterize the Tariff itself.

³⁷ Rehearing Request at 29.

³⁸ *Id.* at 30.

³⁹ October 1 Order at P 41.

⁴⁰ *Id.* at P 39.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests the Commission to accept this answer and deny the Rehearing Request.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM
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November 15, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 15th day of November, 2007.

/s/ Pamela M. Higgins _____

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Submission Contents

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