

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

**New York Independent System Operator, Inc.     )     Docket No. ER07-521-000**

**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 submits this answer to the *Motion to Lodge of New York Municipal Power Agency and Municipal Electric Utilities Association of New York* that was filed in this proceeding on July 28, 2008 (“Motion to Lodge”).<sup>2</sup> The Motion to Lodge should be denied because it seeks to introduce evidence that is not relevant to this proceeding.

Specifically, the Motion to Lodge is based on the mistaken premise that the NYISO’s “Exigent Circumstances Filing” in Docket No. ER08-1281-000<sup>3</sup> supports past allegations that congestion cost data used to determine the price of “Fixed Price TCCs”<sup>4</sup> in May 2008 were “anomalous.” It is true that the Exigent Circumstances Filing described how certain scheduling practices appear to have exacerbated existing west-to-east transmission constraints in New York. The NYISO has taken these issues very seriously and has acted in Docket No. ER08-1281-000 to address them. The issues addressed by the Exigent Circumstances Filing, however, did not

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<sup>1</sup> 18 C.F.R. § 385.213 (2008).

<sup>2</sup> Answers to motions are expressly permitted under Rule 213(a)(3).

<sup>3</sup> *New York Independent System Operator’s Exigent Circumstances Filing Requesting Authority to Amend its Tariffs to Preclude the Scheduling of Certain External Transactions, Requiring Prospective Limited Tariff Waivers, Seeking Expedited Commission Action, Requesting Shortened Notice and Comment Periods, and Contingent Request for Consideration Under Section 206 of the Federal Power Act*, Docket No. ER08-1281-000 (July 21, 2008) (“July Filing”).

<sup>4</sup> Capitalized terms that are not otherwise defined herein shall have the meaning set forth in Article II of the NYISO Services Tariff (including the revisions proposed by the NYISO in its May 16, 2008 compliance filing in this proceeding, as corrected by the NYISO’s May 23, 2008 errata filing.)

affect Day-Ahead Market congestion until the NYISO incorporated changes in the prevailing direction of inadvertent energy flows into its Day-Ahead Market model. The NYISO did not make this change to its Day-Ahead Market model until May, 2008.<sup>5</sup> Thus the issues raised in the Exigent Circumstances Filing could not affect the NYISO's Commission-approved methodology for pricing Fixed Price TCCs until after May 1, 2008. The Fixed Price TCCs at issue in this proceeding were priced using data from May 1, 2006 through April 30, 2008, *i.e.*, before the effects of scheduling practices described in the Exigent Circumstances Filing were incorporated into the methodology.<sup>6</sup> Accordingly, the Exigent Circumstances Filing is not relevant here and the Motion to Lodge should be denied.

In addition, the Commission should deny the Motion to Lodge's request that the NYISO be directed to modify its established practice of releasing official stakeholder-approved minutes, but not electronic recordings, with respect to the July 23 meeting of the NYISO Management Committee. As an initial matter, the request is moot because the NYISO has learned from the third-party communications service that provides electronic recordings of its stakeholder meetings that there was a technical malfunction at the July 23 meeting that prevented it from being recorded. More generally, there is no reason to impose any requirements on the NYISO with respect to the July 23 meeting because the discussions there dealt with issues involving the Exigent Circumstances Filing, and those issues are not germane to this proceeding. Furthermore, the NYISO is concerned that such a requirement would either have a chilling effect that could stifle open and honest discussions at future stakeholder meetings or, alternatively, would force

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<sup>5</sup> The NYISO adjusts its Day-Ahead model to reflect changes in Lake Erie Loop Flow as necessary and, until May 2008, it was not appropriate to incorporate changes in these flows. As Dr. Patton's study of this issue indicated, it was not until May of 2008 that the actual and scheduled flows on the Ontario – New York interface decoupled. (*See Exigent Circumstances Filing at 21.*)

<sup>6</sup> As is noted in footnote 23 below, the NYISO does not concede that Day-Ahead Market congestion data became "anomalous" after May 1.

the NYISO to cease recording meetings, which would result in less accurate and less comprehensive meeting minutes.

## **I. BACKGROUND**

The Commission's April 16 Order in this proceeding<sup>7</sup> approved the NYISO's methodology for setting the price of Fixed Price TCCs. Prices are calculated<sup>8</sup> by averaging: (i) the average of the market-clearing prices calculated for Transmission Congestion Contracts ("TCCs") with a duration of one year and the same Point of Injection ("POI") and Point of Withdrawal ("POW") in each of the four previous Centralized Auctions for TCCs;<sup>9</sup> and (ii) the average annual difference between the Day-Ahead Market Congestion Component at the POW and the POI of those TCCs, summed over the hours of the four most recently concluded Capability Periods.<sup>10</sup>

The NYISO uses a slightly different Commission-approved methodology for Fixed Price TCCs that have a POW at or inside the Long Island Load Zone. That methodology is based on the average annual difference between the Day-Ahead Market Congestion Component at the relevant POW and POI over the four most recently concluded Capability Periods.<sup>11</sup>

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<sup>7</sup> *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 (2008) ("April 16 Order"). The April 16 Order imposed conditions on its approval of the NYISO's pricing methodology which had to do with the NYISO's proposal to include certain other factors in the Fixed Price TCC methodology. These conditions are not relevant to the question of whether the Motion to Lodge is relevant to this proceeding.

<sup>8</sup> *See* NYISO Market Administration and Control Area Services Tariff, Attachment B at Section 2A.2 and NYISO Open Access Transmission Tariff, Attachment M at Section 2A.2.

<sup>9</sup> Normally, the NYISO conducts two "Centralized Auctions" for TCCs, one in the Spring and one in the Fall, prior to the beginning of the Summer and Winter Capability Periods.

<sup>10</sup> The NYISO has two six-month Capability Periods, the Summer Capability Period runs from May 1 to October 31 of each year. The Winter Capability Period begins on November 1 and continues until April 30 of the following year.

<sup>11</sup> *See* NYISO Market Administration and Control Area Services Tariff, Attachment B at Section 2A.2; Open Access Transmission Tariff, Attachment M at Section 2A.2.

Thus, all Fixed Price TCCs are priced based on TCC auction results and Day-Ahead Market Congestion Component data for a two year period.<sup>12</sup> Real-Time Market congestion is not considered in the calculation of Fixed Price TCCs.

In May, the NYISO calculated prices for its first ever set of Fixed Price TCCs, which were offered to Load-Serving Entities (“LSEs”) with expiring or previously expired grandfathered transmission rights that were eligible for conversion into Fixed Price TCCs. These Fixed Price TCCs go into effect at the start of the upcoming Winter Capability Period, *i.e.*, on November 1, 2008. In accordance with its Commission approved methodology the NYISO used TCC auction and Day-Ahead Market Congestion Component data from May 1, 2006 until April 30, 2008, the period encompassed by the four most recently concluded Capability Periods, to price these Fixed Price TCCs.

On June 6, the New York Municipal Power Agency (“NYMPA”) filed a protest belatedly asking the Commission to revise the NYISO’s pricing methodology by adding a “screening mechanism” to exclude allegedly “anomalous” congestion costs from the calculation (“NYMPA Protest”).<sup>13</sup> The Municipal Electric Utilities Association of New York (“MEUA”) filed in support of NYMPA.

The NYMPA Protest claimed that the allegedly anomalous congestion costs arose due to a “unique combination” of transmission line outages on 345 kv transmission lines in Upstate New York. According to NYMPA, these outages resulted in “abnormal” congestion from late December 2007 through February 2008, with the greatest impact occurring during the seventeen

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<sup>12</sup> Market Participants use TCCs to hedge their exposure to congestion charges in the NYISO’s Day-Ahead Market.

<sup>13</sup> *Motions to Intervene and for Expanded Action and Protest of the New York Municipal Power Agency*, Docket Nos. ER07-521-003 and -004 (June 6, 2008).

days from December 22, 2007 through January 7, 2008.<sup>14</sup> NYMPA emphasized that “normal congestion levels” had returned by March 2008.<sup>15</sup>

On June 12, the NYISO filed an answer refuting all of the NYMPA Protest’s claims. The NYISO explained that the NYMPA Protest was a collateral attack on the April 16 Order.<sup>16</sup> It also identified various defects in the evidence submitted by NYMPA and highlighted its failure to demonstrate that the congestion costs used by the NYISO were actually anomalous.

On July 21, 2008, the NYISO submitted the Exigent Circumstances Filing which proposed tariff revisions to preclude the scheduling of External Transactions over eight circuitous paths. Starting in January 2008, a small subset of market participants scheduled a significant number of transactions over two<sup>17</sup> of these paths. The Exigent Circumstances Filing explained that these practices appear to have had a number of negative consequences including shifting the prevailing direction of unscheduled energy flows around Lake Erie (“Lake Erie Loop Flows”)<sup>18</sup> in a manner that exacerbated existing west-to-east transmission constraints within New York.<sup>19</sup>

Importantly, however, the NYISO did not adjust its Day-Ahead Market assumptions to reflect the change in the prevailing direction of Lake Erie Loop Flows until after May 1, 2008,

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<sup>14</sup> NYMPA Protest at 7-8.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> The fact that the NYISO has answered the Motion to Lodge should not be construed as a waiver of its prior objection that the NYMPA Protest was a collateral attack on the April 16 Order, and thus not properly before the Commission. To be clear, the NYISO believes that the NYMPA Protest, and thus the Motion to Lodge, should both be denied as impermissible collateral attacks on the April 16 Order.

<sup>17</sup> The Exigent Circumstances Filing explained that the other six circuitous scheduling paths had not been actively used by market participants but had the potential to become substitutes for the two paths that were actively used.

<sup>18</sup> Specifically, in 2008, Lake Erie Loop Flows have predominantly flowed in a “clockwise” direction, *i.e.*, they enter New York at its border with Ontario and exit over various paths into PJM. *See* Exigent Circumstances Filing at 8.

<sup>19</sup> *See* Exigent Circumstances Filing at 7-8.

when the actual and scheduled flows across the Ontario-NYISO interface actually decoupled. Prior to May, the NYISO's Day-Ahead Market model continued to assume that inadvertent energy would generally flow counter-clockwise around Lake Erie as it has for over a year. The assumptions the NYISO incorporates into its Day-Ahead Market model are intended to more closely align Day-Ahead transmission availability and Day-Ahead Locational Based Marginal Prices to those experienced in real-time. Until it became appropriate to model changes in the Lake Erie Loop Flow assumptions in the Day-Ahead Market model, the issues addressed by the Exigent Circumstances Filing did not increase or otherwise impact Day-Ahead Market congestion.<sup>20</sup> The change in the prevailing direction of Lake Erie Loop Flows was therefore not seen in the data the NYISO used to establish the prices for the Fixed Price TCCs that are at issue in this proceeding.<sup>21</sup>

## **II. ANSWER**

### **A. The Motion to Lodge Should Be Denied Because the Exigent Circumstances Filing Is Not Relevant to this Proceeding**

The Commission has consistently denied motions to lodge that seek to inject irrelevant material into a proceeding, particularly when the material relates to issues that are being considered in other proceedings.<sup>22</sup> The Commission should follow this precedent here.

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<sup>20</sup> The change in Lake Erie Loop Flows were reflected in Real-Time Market congestion prior to that time.

<sup>21</sup> The Motion to Lodge claims that NYISO staff agreed with NYMPA at the July 23 meeting of the NYISO Management Committee meeting that: "reverse loop flows would increase congestion costs both in the Day-Ahead and Real-Time markets and would artificially raise the congestion values on which the NYISO relied to set the price of Fixed Price TCCs." The NYISO staff did indicate that loop flow changes could impact Day-Ahead Market congestion. However, this would only occur after the change in the prevailing direction of loops flows was reflected in the NYISO's Day-Ahead Market model. As was noted above, the NYISO did not make this modification until after May 1, 2008.

<sup>22</sup> See, e.g., *Alternate Power Source, Inc. v. W. Mass. Elec. Co. N.E. Utilis. Sys.*, 104 FERC ¶ 61,255 (2003). See, e.g., *Tampa Elec. Co.*, 83 FERC ¶ 61,262 at 62,092 (1998) (denying motion to lodge documents from another proceeding as "immaterial to our findings in this proceeding"); *Public Serv. Co. of New Hampshire v. New Hampshire Elec. Coop. Inc.*, 83 FERC ¶ 61,223 at 61,990 (1998) (denying motion to lodge an order of the New Hampshire Public Utilities Commission because it was "not necessary to our disposition of this proceeding"); *Wisconsin Pub. Power Inc. Sys.*, 83 FERC ¶ 61,198 at 61,855 (1998) (denying motion to lodge a document from

The Exigent Circumstances Filing is not relevant to the pricing of Fixed Price TCCs because the shift in the prevailing direction of Lake Erie Loop Flows did not affect the data on which the prices of the Fixed Price TCCs offered in May 2008 were based. As was explained above, the change in the prevailing direction of Lake Erie Loop Flows was not reflected in the NYISO's Day-Ahead Market model until after April 30, 2008, which was the end of the data period used to calculate the disputed prices in this proceeding.<sup>23</sup>

NYMPA's own past statements confirm the irrelevance of the Exigent Circumstances Filing to this proceeding. The NYMPA Protest claimed that the "anomalous" congestion occurred between December 2007 and February 2008, well before the NYISO updated its Day-Ahead Market model. The NYMPA Protest also stated that relevant congestion levels "returned to normal" in March 2008, which was months before Day-Ahead Market model assumptions regarding Lake Erie Loop Flows were changed. By contrast, the Exigent Circumstances Filing explained that the volume of transactions over circuitous scheduled paths increased steadily after March and did not peak until May.<sup>24</sup> Simply stated, the Exigent Circumstances Filing addresses different issues than the ones that were raised by the NYMPA Protest.

Finally, the issues presented by the Exigent Circumstances Filing are already being addressed in Docket No. ER08-1281-000. NYMPA and MEUA have both intervened and filed comments in that proceeding. The Motion to Lodge should therefore be denied.

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another proceeding "as immaterial to our determination in this proceeding"); *Municipal Elec. Utils. Ass'n of New York State*, 48 FERC ¶ 61,124 at 61,457 (1989) (denying motion to lodge an order of the Vermont Public Service Board because "documents either do not show what they purport to show, or are irrelevant to the issues of this proceeding.")

<sup>23</sup> The fact that the effects of changes to Lake Erie Loop Flows were reflected in the NYISO's Day-Ahead Market model starting in May 2008 does not mean that Day-Ahead Market Congestion Component data became "anomalous" as of that time. The NYISO reserves the right to take the position that it is appropriate to use Day-Ahead Market congestion data from May through July 2008 in the pricing of future Fixed Price TCCs to the extent that the issue may be raised in future proceedings.

<sup>24</sup> See Exigent Circumstances Filing at 20.

**B. Because the Issues Addressed by the Exigent Circumstances Filing Are Not Germane to this Proceeding There Is No Reason for the NYISO to Release Additional Information Regarding Stakeholder Discussions of the Exigent Circumstances Filing**

The Motion to Lodge asks the Commission to require the NYISO to provide a copy of the electronic record of the July 23 Management Committee meeting to NYMPA and MEUA.<sup>25</sup>

Elsewhere it suggests that the electronic record of that meeting should be made generally available to Management Committee members that seek it.<sup>26</sup>

As the NYISO noted above, the Motion to Lodge's requests are moot because the NYISO has learned from the third-party communications service that provides electronic recordings of its stakeholder meetings for use in preparing initial minutes that there was a technical malfunction at the July 23 meeting. Thus, there is no electronic recording for the NYISO to disclose.

The NYISO respectfully submits that there is no reason for the Commission to compel it to deviate from its normal procedure, which is to memorialize the substance of Management Committee meetings in minutes that have been approved by the stakeholder members of the Management Committee themselves. As was demonstrated above, the NYISO's Exigent Circumstances Filing is not relevant to this proceeding. The July 23 Management Committee meeting focused on the issues raised by the Exigent Circumstances Filing. Consequently, there is no reason for the Commission to take up the Motion to Lodge's request in this proceeding that the NYISO make an electronic recording of those discussions available.

More generally, public release of meeting recordings would reduce stakeholders' willingness to engage in candid and substantive discussion at stakeholder meetings. This would

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<sup>25</sup> Motion to Lodge at 6.

<sup>26</sup> Motion to Lodge at 1.



make the meetings less effective and harm the NYISO's entire shared governance system. The NYISO should not be required to make a significant change in its stakeholder meeting procedures, which would affect all stakeholders, in response to a unilateral request by particular stakeholders.

### **III. CONCLUSION**

For the reasons presented above, the Commission should deny the Motion to Lodge.

Respectfully submitted,

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August 12, 2008

**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 this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2008).

Dated at Washington, DC this 12th day of August, 2008.

By: /s/ Ted J. Murphy  
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