

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

New York Independent System Operator, Inc.) Docket No. ER06-185-004

**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 (2006), the New York Independent System Operator, Inc. (“NYISO”) hereby moves to answer, and answers, the protest of the New York Transmission Owners (“NYTOs”) submitted on November 13, 2006 in the above-captioned proceeding (“NYTO Protest”).

I. Explanation of Right to Answer and Request for Leave to Submit Answer

The NYISO recognizes that the Commission generally discourages responses to protests. The NYTO “Protest,” however, is really a motion asking the Commission to declassify and publicly disclose information that the NYISO has asked the Commission to protect from public disclosure.¹ The Commission’s Rules of Practice and Procedure therefore permit the NYISO to respond to the NYTO “Protest” as a matter of right.²

In the alternative, should the Commission determine that the NYISO’s response is not expressly permitted under Rule 213(a)(3), the NYISO respectfully requests leave to submit this response. The Commission has allowed such responses when they help to clarify complex issues, provide additional information that will assist the Commission,

¹ See NYTO Protest at 5 (requesting that the Commission grant an order denying the NYISO’s request for privileged treatment and to order the NYISO to disclose bid information in subsequent filings).

² Rule 213(a)(3) of the Commission’s Rules of Practice and Procedure allows an answer to filings seeking affirmative relief from the Commission. 18 C.F.R. § 385.213(a)(3). See, e.g., *Virginia Electric and Power Co.*, 103 FERC ¶ 61,010 at PP 5 and 11 (2003) (accepting answer to request for affirmative relief).

correct inaccurate statements, or are otherwise helpful in developing the record in a proceeding.³

The NYISO's response meets this standard. The NYTOs object to the NYISO's designation of certain information submitted in its October 23, 2006 in this proceeding ("October 23 Filing"), as well as in certain earlier filings containing the same categories of information, as confidential materials for which public disclosure is not appropriate. As is explained in more detail below, the NYISO believes that some of the information may be released, in a redacted format, in accordance with the procedures set forth in its Market Administration and Control Area Services Tariff ("Services Tariff"). However, other information for which the NYISO has sought confidential protection should not be made publicly available.

II. Answer

The NYTO Protest states that there are "certain categories of information for which the NYISO requests confidential treatment" that do not "deserve such treatment."⁴ First, the NYTOs contend that "[t]here is no demonstrated need to continue to mask supplier bid information once a period of six months has passed from the time the bids were initially submitted."⁵ In support, the NYTOs point to Section 6.3 of the Services Tariff. In addition, the NYTO Protest argues that "[t]he disclosure of specific Market Participant

³ See, e.g., *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 . . ."); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000) (allowing "the NYISO's Answer of April 27, 2000, [because it was deemed] useful in addressing the issues arising in these proceedings . . ."); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 at 61,381 (1999) (accepting prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding).

⁴ NYTO Protest at 3.

⁵ *Id.*

transaction data, including original Bid data and daily and hourly details of proposed RTGP [Real-Time Guarantee Payment] mitigation, may assist interested stakeholders in making an evaluation of whether market manipulation or other forms of market power, such as economic withholding, has occurred.’⁶

As the NYISO explains below, the non-confidential bid information contained in the NYISO’s filing that is more than six month old is already publicly available on the NYISO’s web site in accordance with the requirements of Section 6.3 of the Services Tariff. Section 6.3 of the Services Tariff requires that the identity of the bidder be masked. In order to protect bidders’ identities, the NYISO also masks each generator’s location in the data it posts on its web site. Unlike the non-confidential bid data available on the NYISO’s web site, the bid information that the NYISO has filed with the Commission in conformance with Section 388.112(b) of the Commission’s regulations⁷ includes the unmasked identity of each bidding entity. In addition, because the NYISO is only correcting guarantee payment mitigation for New York City generators, masking the bidding entity’s identity would not adequately mask the location of the underlying generators. The remaining data that the NYTOs ask the Commission to disclose is all data that the NYISO is required to safeguard.⁸

For the foregoing reasons, the NYTO’s request should be rejected and the data that the NYISO has submitted should remain confidential.

⁶ *Id.*

⁷ 18 CFR § 338.112(b) (2005).

⁸ *See* §§ 2.8 and 6.3 of the NYISO’s Market Monitoring Plan; Article 6 of the NYISO’s Market Administration and Control Area Services Tariff; § 4 of Attachment F to the NYISO’s Open Access Transmission Tariff (“OATT”).

A. Original Bid Information From February 2005 to April 2006 Is Publicly Available For Review On the NYISO's Web Site

The NYISO agrees with the NYTOs that Section 6.3 of the Services Tariff governs the disclosure requirements for supplier bid information, and agrees that Section 6.3 provides that bid information may be released after six months. In accordance with this provision of its Services Tariff, the NYISO has already posted on its web site at <http://mis.nyiso.com/public/P-27list.htm> as-submitted bid data that is more than six months old. The NYTO Protest correctly quotes Section 6.3 as providing that the identity of the bidders may not be released even after stale bid information is publicly disclosed. In accordance with Section 6.3, while the NYISO makes stale bid information public, the identity of specific suppliers submitting the bids is masked "in a way that permits third parties to track each individual bidder's bids over time." In order to effectively mask bidders' identities, the NYISO must also mask the generator's location in the data it posts on its website.

Unlike the non-confidential bid data available on the NYISO's website, the bid information that the NYISO has submitted to the Commission includes the unmasked identity of each bidding entity. In addition, because the NYISO is only correcting guarantee payment mitigation for New York City generators, even revealing bid data with the bidding entity's name redacted or masked would still provide confidential information about the underlying generator's location.

In summary, original bid information covering the February 2005 to April 2006 period is already electronically available for review by the NYTOs on the NYISO's website in csv format. There is no reason to require the NYISO to release duplicative information in this docket. The remaining bid data has been properly designated as

privileged by the NYISO and the Commission should not place these generators at a competitive disadvantage by publicly revealing the contents of filings the NYISO submitted to the Commission pursuant to a claim of privilege that conforms to the requirements of Section 388.112(b) of the Commission's Regulations.

B. The Other Materials For Which The NYTOs Seek Public Disclosure Should Remain Confidential

With respect to the other information for which the NYTOs seek public disclosure, the NYISO does not believe that the NYTOs have presented any valid basis for making the information publicly available. Although the NYTO Protest is not entirely clear on the scope of the materials it believes should be made publicly available, it appears that the NYTO's request encompasses within its broad scope generator-specific reference levels. Reference levels are intended to reflect an individual generator's marginal costs of providing energy or ancillary services.⁹ In accordance with Section 2.8 of the NYISO's Commission-accepted Market Monitoring Plan ("MMP"), the NYISO is obligated to safeguard the confidentiality of "information that is confidential, proprietary, commercially valuable or competitively sensitive or is a trade secret, and that has been designated as such in writing by the party supplying the information to the NY ISO or by the NY ISO." Reference levels have been designated by the entities providing the data and/or by the NYISO as confidential.¹⁰ Generator-specific cost information that is reflected in reference

⁹ Services Tariff, Attachment H §3.1.4.

¹⁰ For example, the NYISO has routinely and repeatedly designated generator reference levels as confidential in response to requests from the New York Public Service Commission ("PSC") to review such information. When the NYISO receives a request to review reference level data from the PSC, the NYISO posts a public notice on its website indicating that the data it is providing to the PSC is confidential. The confidential data is made available for review by the PSC in compliance with a pair of orders the PSC issued in August of 2000. The notices are issued to comply with Section 4 of the NYISO's Code of Conduct (set forth in Attachment F to the NYISO's OATT), which requires the NYISO to provide affected Market Participants with an opportunity to object to the NYISO's disclosure

levels is commercially sensitive data, the disclosure of which could cause undue harm to the entity to which it relates or provide an undue advantage to their competitors.

In addition, the NYTO's request seeks to require the NYISO to publicly reveal the details of generator-specific mitigation. Again, the NYISO does not make this information publicly available and believes it is required to protect this information by Section 4 of its Code of Conduct, Sections 2.8 and 6.3 of its Market Monitoring Plan and Article 6 of its Services Tariff. Since mitigation involves reducing as-submitted bids to a reference level that approximates the generator's marginal cost of operating, the requested mitigation details raise all of the confidentiality and proprietary data concerns discussed above.

With the exception of the bid data that is already publicly available on the NYISO's web site, the NYISO disagrees with the NYTO's contention that the "Market Participant transaction data" submitted to the Commission pursuant to a claim of privilege should be unmasked. The NYTOs have offered nothing more than a vague statement that the public release of such information may be useful. In these circumstances, the potential costs of publicly releasing this information — including the potential competitive harm to individual Market Participants whose data would be revealed and the loss in confidence that would occur if data provided to the NYISO's Market Monitoring and Performance Department in confidence was later made public — far outweighs any benefits identified by the NYTOs that might arise from revealing the data.

of their confidential data. The notices are available at http://www.nyiso.com/public/documents/regulatory/mp_notices.jsp.

III. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that this answer be accepted, that the Commission reject the NYTO's request and that the data that the NYISO submitted pursuant to a claim of privilege remain confidential.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM
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November 28, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Answer upon each person designated on the official service list compiled by the Secretary in Docket ER06-185, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 2010 (2006).

Dated at Washington, DC, this 28th day of November, 2006.

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