

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

New York Independent System Operator, Inc,) Docket No. ER04-230-023

**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, 18 C.F.R. § 385.213 (2005), the New York Independent System Operator, Inc. (“NYISO”), respectfully requests leave to answer, and answers, the *Comments of Multiple Intervenors* on the NYISO’s February 28, 2006 compliance report (“*Compliance Report*”) in the above-captioned proceeding. The NYISO appreciates the Multiple Intervenors’ recognition that it should be allowed to finish work on the Settlement System Replacement (“SSR”) project before it is required to implement major market modifications related to Demand Side Resources (“DSR”).

On the other hand, the NYISO does not agree that the timely implementation of SSR should be conditioned on its providing “selective bidding” options for DSRs by the third quarter of 2007. Multiple Intervenors are the only NYISO stakeholders demanding selective bidding and the Commission should not impose their policy preference on all others. Selective bidding would reduce the overall efficiency of the NYISO-administered markets. It is also not needed given that the NYISO offers straightforward bidding tools that would allow DSRs to capture many of the benefits of selective bidding without requiring the NYISO to make major software modifications.

Alternatively, if the Commission requires that the NYISO adopt selective bidding, it should reject the Multiple Intervenors’ proposed deadline. The NYISO’s best estimate was, and continues to be, that it could accommodate “RTS-ready” DSRs by that date, not “non-RTS-ready” DSRs. Supporting “non-RTS-ready” DSRs that only wish to be in the markets through

selective bidding poses a much greater implementation challenges. The NYISO's entire Commission-approved market design is based on the principle that all suppliers' bids make them available to provide all products that they are eligible to offer. Separate mechanisms to allow selective bidding by DSRs cannot be put in place by the third quarter of 2007, especially if the goal is to institute it without losing the benefits of having co-optimized energy and ancillary services markets in New York. The Commission should also refuse to adopt an arbitrary implementation deadline. It should instead allow the NYISO to work with its stakeholders, all of whom would have an interest in the form that selective bidding rules take, to work out the details and propose an implementation timetable that reflects all stakeholders' needs.

I. Request for Leave to Answer

The Commission normally allows answers to pleadings styled as "comments" but generally discourages answers to "protests."¹ Because the Multiple Intervenors' pleading is styled as "comments," the NYISO believes that it is permitted to answer as a matter of right. If, however, the Commission concludes that the Multiple Intervenors' pleading is tantamount to a protest, the NYISO respectfully asks that the Commission exercise its discretion and grant it leave to answer. The Commission has allowed answers to protests when they 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.² In this case, the NYISO's answer should be accepted because it will clarify the record and will help the Commission to make a

¹ 18 C.F.R. § 385.213 (2005).

² 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 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 . . .").

reasoned decision, especially with respect to the difficulty of introducing “selective bidding” mechanisms. This answer also corrects certain misstatements by the Multiple Intervenors.

II. Answer

A. The Commission Should Not Require the NYISO to Adopt Selective Bidding for DSRs

The *Compliance Report* asked that the Commission not require the NYISO to implement “selective” or “ancillary services only” bidding for DSRs because there was little support for it among the NYISO stakeholders. Most “would not want [the NYISO] to commit the resources, or to postpone work on other projects” in order to develop such a program.³ The NYISO has consistently taken the position that the Commission should reject attempts by individual stakeholders to make end-runs around the stakeholder process in an attempt to impose their own preferences.⁴ The Commission has emphasized that it looks with disfavor on such attempts.⁵ The same principle should apply in this case, where the Multiple Intervenors are the only entities to push for “selective bidding” after it failed to gain any traction during protracted stakeholder discussions.

Multiple Intervenors argue that it is reasonable to require that selective bidding be available in New York because it is already in place in the ISO New England Inc. (“ISO-NE”)

³ *Compliance Report* at 7.

⁴ *See, e.g., Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, Docket No. ER06-310-000 at n.19 (Jan. 20, 2006).

⁵ *See, e.g., KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 110 FERC ¶ 61,116 at P 37 (2005) (expressing “sympathy for the concerns raised as to Ravenswood’s behavior in sidestepping NYISO’s stakeholder process...”). *Cf. Niagara Mohawk Power Corp. v. New York State Reliability Council, et al.*, 114 FERC ¶ 61,098 (2006) (dismissing complaint and concluding that complainant had failed to exhaust the normal NYISO procedures).

and PJM Interconnection, LLC (“PJM”) markets.⁶ This is misleading. As an initial matter, the NYISO’s understands, based on conversations between its technical staff and ISO-NE’s in the last week, that ISO-NE does not currently offer DSRs selective bidding. In its February 6, 2006 filing letter regarding its proposed Ancillary Services Market (“ASM”) project,⁷ ISO-NE noted that “under Phase II of the ASM project, demand resources will be able to participate in the reserves markets on a comparable basis to generating resources,”⁸ and intends to implement such a system by October 1, 2006. This is exactly what the NYISO is proposing to do through the Demand Side Ancillary Services Program (“DSASP”) described in the *Compliance Report*.

It is true that PJM has recently introduced a form of selective bidding,⁹ but Multiple Intervenors neglect to mention that there is a fundamental difference between the PJM and NYISO market designs and software that prevent the NYISO from simply imitating PJM’s approach. PJM’s energy and ancillary services markets are not dispatched in a single integrated and co-optimized process.¹⁰ The NYISO’s day-ahead markets have been fully co-optimized since their inception in 1999 while its real-time markets came to be fully integrated when the NYISO’s Real-Time Scheduling (“RTS”) system went into effect, with the Commission’s blessing, in 2004.

Thus, PJM already selects energy and ancillary services providers separately, which makes it far easier for it to allow DSRs to only offer to provide individual products. By contrast,

⁶ See *Comments of Multiple Intervenors* at 6-7.

⁷ See ISO-NE Filing Letter in Docket No. ER06-613-000 (Feb. 6, 2006).

⁸ *Id.* at 9.

⁹ See *PJM Interconnection, LLC*, 114 FERC ¶ 61,201 (2006).

¹⁰ Similarly, ISO-NE’s energy and ancillary services markets are not co-optimized.

as the NYISO has previously explained,¹¹ it determines which resources will provide energy and ancillary services through a single integrated process. Under this system, each supplier must make itself available to provide any product that it is legally eligible and technically qualified to supply. This approach has many advantages. The most important is that it produces a lower total cost for energy and ancillary services than would result under a non-integrated system. The NYISO model also results in improved coordination between the day-ahead and real-time markets and fewer software interaction problems than it experience prior to RTS. Allowing selective bidding for DSRs would undermine the cost advantage that RTS brought. It would also require the NYISO to run a distinct DSR-only dispatch and develop a way to make it interface correctly with the integrated dispatch for all other suppliers.

The Commission's previous orders in this proceeding required the NYISO to find a reasonable balance between the need to "accommodate the special aspects of DSRs without violating the fundamental design principles of RTS."¹² The Multiple Intervenors' proposal makes no effort to reconcile these objectives and is totally inconsistent with the Commission-approved RTS design. By contrast, the NYISO's proposed DSASP would strike an appropriate balance by permitting DSRs that were willing to offer to participate on the same terms as other suppliers, *i.e.*, by making themselves available to provide energy as well as ancillary services, into the markets.

¹¹ See, e.g., *Compliance Report* at 7; see generally NYISO Filing Letter, Docket No. ER04-230-000 (Nov. 26, 2003). Given these past references, it is inaccurate for the Multiple Intervenors to imply that the NYISO has not explained what it means when it says that its markets are tightly integrated. See *Comments of Multiple Intervenors* at 7, n. 2 and 9.

¹² *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111 at P 66 (2004) ("*RTS Order*").

The NYISO also already offers bidding tools that would enable DSRs to greatly reduce the chances that they would be required to provide energy if they do not wish to do so. When the NYISO made this point in the *Compliance Report* it was under the impression, based on informal conversations with DSR representatives, that most DSRs had become comfortable that these tools would meet their needs. The Multiple Intervenors comments indicate that this was a misimpression, but the fact that DSRs may be anxious about using these tools does not change the reality that they are available and simple to use.

Structuring bids in a manner that would reduce a DSR's exposure to providing energy is not a "sophisticated" task and will not require extensive "technical or human resources."¹³ A DSR need only include a very low minimum generation offer price together with a high incremental energy offer price in order to obtain the necessary selectivity. This is not materially more difficult, and does not require any more expertise or analysis, than submitting a selective bid would. To the extent that small DSRs require assistance they can ask NYISO customer representatives for help. In short, much of the benefit that "selective bidding" would provide to DSRs would be available under the DSASP using existing bidding tools. The Commission should therefore not reduce the economic benefits that RTS brings based on the Multiple Intervenors' speculation that some DSRs will not participate in the markets if they are required to learn how to use the same bidding tools that are employed by all other Market Participants.

Finally, if the Commission were to determine that DSRs have a right to engage in selective bidding it is difficult to see why other suppliers would not have the same right.¹⁴

¹³ *Comments of Multiple Intervenors* at 10.

¹⁴ Giving DSRs advantages over other suppliers would appear to be discriminatory under the Federal Power Act. Although the Energy Policy Act of 2005 required the Commission to eliminate "unnecessary barriers" to DSR participation in organized electricity markets that
(continued...)

Reaching that conclusion, however, would essentially nullify the market integration that was the primary benefit of the multi-year, multi-million dollar RTS project.

B. If the Commission Requires the NYISO to Implement Selective Bidding it Would Be Unreasonable to Require that it be in Place by the Third Quarter of 2007

In the event that the Commission decides to require the NYISO to implement selective bidding, it should reject Multiple Intervenors' argument that the SSR project should only be given a higher implementation priority than DSR integration on the condition that selective bidding be in place by a "hard" deadline in 2007. The *Compliance Report* provided a detailed explanation of how the SSR project would bring major benefits, why it required substantial resource commitments, and why it would be irrational to commence work on DSR integration projects before SSR was complete. The *Compliance Report* was also clear that the NYISO's best estimate was that it could implement the DSASP program by the third quarter of 2007 if it made a maximum effort.

The DSASP, however, would not support selective bidding. For the reasons set forth above, selective bidding would be a significant departure from the existing NYISO market design and software systems. Introducing it would be a much bigger challenge than implementing the DSASP. The NYISO would first have to create new software for selective bidding.¹⁵ It would then need to develop, and test, systems for integrating the new software with its existing systems, taking time to detect problems and to ensure that the systems do not interact

language should not be read as requiring the Commission to eliminate any market rule, such as the NYISO's integrated bidding system, that is generally in the public interest but that might be disfavored by some DSRs.

¹⁵ Because the NYISO and PJM use different software platforms and have market designs with different degrees of product integration, it would not be possible for the NYISO to simply adopt the PJM software.

in a way that would have unintended adverse effects, such as causing pricing or scheduling errors. Because the NYISO will be making design choices that will have the potential to affect all stakeholders, it will be necessary to consider their input and make changes in response to their concerns. Moreover, no matter how high a priority the Commission were to give to selective bidding it would not be the only project that the NYISO staff would have to undertake. Work on it would therefore need to be coordinated with other projects, some of which will be interdependent in the same way that SSR and DSR efforts would be.

Given the past statements that Multiple Intervenors have made in this proceeding, it is important to emphasize that this timetable does not reflect any unwillingness by the NYISO to move ahead diligently or any antipathy towards DSRs. To the contrary, the NYISO appreciates the benefits that enhanced DSR integration can bring and supports their realization.

Nevertheless, as the Commission knows, major software changes are time-consuming and cannot be rushed without introducing unacceptable market risks. There are many examples of the Commission allowing system operators to take the necessary time to introduce substantial changes.¹⁶ Most recently, the Commission directed the Southwest Power Pool RTO to take more time to develop its imbalance energy market proposal, even though the project was

¹⁶ See, e.g., *ISO New England, Inc.*, 112 FERC ¶ 61,278 at P 12-13 (2005) (finding, among other things, “that ISO-NE currently does not have the needed resources to implement a software change that would allow such tracking [of de-listed installed capacity]” and that “deferment of this change is justifiable.”); *Midwest Independent Transmission System Operator, Inc., et al.*, 111 FERC ¶ 61,043 at P 86 (2005) (“[W]e require the IMM and the Midwest ISO to make an informational filing that includes a detailed report on the status of the software needed to implement AMP, a target completion date, and a best estimate by IMM and the Midwest ISO of the earliest date it could file an AMP proposal at the Commission.”). Cf. *Southwest Power Pool, Inc.*, 82 FERC ¶ 61,285 at 62,104 (1998) (deferring effective date of proposed regional tariff because of the time necessary to make and implement certain software changes).

expected to bring important benefits and had previously been delayed.¹⁷ As Chairman Kelliher pointed out in his statement accompanying the order, the Commission recognized that “[i]t is better to get it done right than to get it done fast.”¹⁸ The same reasoning should apply to this proceeding

In the same vein, Multiple Intervenors’ criticism of the NYISO for offering best estimates of how much time software work will require, instead of committing itself to “hard deadlines,” is unfair. The NYISO cannot predict the future with perfect accuracy or foresee every problem that might arise in a complex software project. As the Commission has recognized, the timetable for software-related work can be inherently uncertain. For example, it allowed both the NYISO and ISO-NE to introduce major market reforms on “flexible” deadlines.¹⁹ It is also unreasonable to expect the NYISO to commit to hard deadlines when it is subject to Commission-imposed requirements that can override its other priorities. Among other things, the Commission is currently considering whether to require all ISOs/RTOs to make major changes to their long-term firm transmission rights.²⁰ If this proposal is adopted, it would require the NYISO to take on another major project, likely at the same time that it will be working on the DSASP or a selective bidding project. Like all organizations, the NYISO has finite human and technical

¹⁷ See *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 (2006).

¹⁸ Statement of Chairman Joseph T. Kelliher, Docket No. ER06-451-000 (March 16, 2006).

¹⁹ See *RTS Order* at P 5, 10; *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287 (2002).

²⁰ See *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Notice of Proposed Rulemaking, 114 FERC ¶ 61,097, Docket Nos. RM06-8-000, AD05-7-000 (Feb. 2, 2006).

resources. It cannot make absolute commitments to meet future deadlines when it is possible that the Commission will direct that those resources be used for other purposes.

Consequently, the Commission should not adopt Multiple Intervenors' recommendations or impose an arbitrary deadline of its own for the implementation of selective bidding. Given the complexity of the design issues associated with selective bidding, and the project's substantial impact on all stakeholders, if the Commission concludes that altering the NYISO's market design to permit selective bidding is warranted, it should instead direct the NYISO and its stakeholders to work out the details and develop a timetable for moving forward. The NYISO believes that this process could be complete within 120 days of a Commission-order mandating selective bidding.

C. Multiple Intervenors are Wrong to Suggest that the NYISO Tariff Prohibits DSR Participation in the Real-Time Ancillary Services Markets Today

The Multiple Intervenors ask the Commission to require the NYISO to amend its tariffs to allow DSRs to "provide synchronized reserves and ancillary services."²¹ This request should be rejected at this time because it would result in the NYISO having tariff language that it will not be able to implement until software changes are in place. Revising tariff language will not in and of itself give the NYISO the ability to support expanded DSR participation. Moreover, such a change would be pointless in the case of ancillary services that DSRs are not allowed to offer under currently effective reliability rules. Thus, the NYISO should instead be allowed to keep its existing tariff language until it is ready to institute new rules.

D. The Commission Should Not Unnecessarily Burden the NYISO with Reporting Requirements

²¹ *Comments of Multiple Intervenors* at 8. Presumably, the Multiple Intervenors do not mean to imply that synchronized reserves in not an ancillary service.

Finally, the Multiple Intervenors request that the NYISO be directed to file periodic status reports on various issues. Multiple Intervenors' recommendations on this subject are not consistent, but they appear to be asking that the NYISO submit reports on a monthly basis.²² The NYISO respectfully submits that periodic reporting is unnecessary. The NYISO will work assiduously to implement DSR integration, regardless of whether it takes the form of the DSASP or a selective bidding program. Stakeholders will be kept apprised of the NYISO's progress through the normal stakeholder process. If they are dissatisfied with the NYISO's progress, they will be able to bring their concerns matter to the Commission's attention directly. Monthly reporting would thus be needlessly burdensome and expensive. Requiring it will only create opportunities for parties to try to involve the Commission in detailed software design issues, or even to litigate over them. The NYISO respectfully submits that this should be avoided.

If, however, the Commission concludes that some form of reporting is appropriate it should require that reports be filed on a quarterly, not a monthly basis. Quarterly reports are more likely to be useful to the Commission because there will be more to discuss on a quarterly basis. Quarterly reports will also be less burdensome for the NYISO.

²² In their comments, Multiple Intervenors request that the Commission require the NYISO to provide bi-monthly status reports on page 7, but also request that the Commission require the NYISO to provide monthly reports at page 11.

III. Conclusion

In conclusion, for the reasons set forth above, the Commission should accept the NYISO's *Compliance Report* and decline to require the NYISO to adopt "selective bidding" at this time. Alternatively, if the Commission imposes a selective bidding requirement, it should decline to impose an unreasonable implementation deadline and instead allow the NYISO and its stakeholders to work out the details of an implementation plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document on the official service list compiled by the Secretary in this docket, in accordance with the requirements of 18 C.F.R. § 385.2010 (2005).

Dated at Washington, DC, this 5th day of April 2006.

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