

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

New York Independent System Operator, Inc.) Docket No. ER04-1229-000

**MOTION OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
FOR LEAVE TO ANSWER AND ANSWER TO COMMENTS AND PROTESTS**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 212, 213 (2004), the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests leave to answer and answers certain comments and protests concerning its September 15, 2004 filing in this proceeding (“September 15 Filing”). In the September 15 Filing, the NYISO proposed to revise the allocation of the NYISO’s budgeted annual operating costs and its FERC-assessed regulatory fees (“NYISO’s Operating Costs”) contained in Schedule 1 of the NYISO’s Open Access Transmission Tariff and of its Market Administration and Control Area Services Tariff. The proposal is to allocate 80 percent of these costs to load and other withdrawals of energy (“Load”) and 20 percent to all injections, except wheel-throughs, supplying Energy into the NYCA (“Supply”).¹ The proposed modification was approved by the NYISO’s Management Committee with an affirmative vote of 87.63 percent.

In support of this Motion for Leave to Answer and Answer, the NYISO states the following.

¹ NYISO’s Operating Costs are currently allocated 85% to Load and 15% to Supply.

I. Motion for Leave to Answer

The NYISO recognizes that the Commission generally discourages answers to responsive pleadings. The Commission has, however, allowed such answers when they help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, or are otherwise helpful in the development of the record in a proceeding.² This Answer satisfies those standards because it responds only to specific arguments raised by the Protestors and provides additional information that the Commission needs to fairly evaluate them. The NYISO, therefore, respectfully requests that the Commission grant the NYISO leave to answer.

II. Answer

The NYISO will not repeat in this Answer statements made in the September 15 Filing which are responsive to the Protests and Comments filed in this proceeding. Instead, the NYISO intends herein to address only certain factual mischaracterizations made in those pleadings.

In its Comments filed October 6, 2004, KeySpan-Ravenswood, LLC (“Ravenswood”) attempts to challenge the NYISO’s assertion that the vote on the 80/20 proposal at the Management Committee represented broad support from Market Participants from across sectors. Ravenswood characterizes the Management Committee’s vote on this issue as “evidence of the load vs. supply split” which Ravenswood has previously described and states

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 . . .”); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (2000) (allowing an answer deemed “useful in addressing the issues arising in these proceedings . . .”).

that the vote was not representative of the “actual magnitude of support for the proposal” (Ravenswood Comments at 3). These assertions are misleading.

A review of the voting record demonstrates the broad support the proposal received across sectors. All five sectors³ voted with a majority in favor of the proposal. In fact, of the Market Participants in the Generation Owners sector who voted, 75 percent voted in favor of the proposal, and, of the Market Participants in the Other Suppliers sector who voted, 100 percent voted in favor of the proposal.⁴ Therefore, any implication that the sectors representing the supply side of the market did not vote overwhelmingly in support of the 80/20 proposal is not correct.

The Protest of the New York Municipal Power Agency (“NYMPA”) attempts to cast doubt on the objective nature of the study performed by R.J. Rudden Associates, Inc. (“Rudden”). NYMPA places great significance on an initial report provided by Rudden on March 19, 2004, which included a preliminary recommendation to allocate 70.67 percent of NYISO’s Operating Costs to Load and 29.33 percent to Supply (NYMPA Protest at 5-11). NYMPA characterizes Rudden’s final recommendation to allocate 77 percent to Load and 23 percent to Supply as an inappropriate compromise.

NYMPA fails to recognize that the Rudden study was an iterative process allowing Rudden to gather information that would ultimately lead to an independent recommendation concerning the allocation of NYISO’s Operating Costs. Rudden presented preliminary results of its study to Market Participants and solicited feedback. Rudden then made an independent

³ The five sectors are Generation Owners, Other Suppliers, Transmission Owners, End Use Consumers, and Public Power/Environmental Parties.

⁴ Four of the eight Market Participants in the Generation Owners sector present at the Management Committee meeting abstained. Ten of the eighteen Market Participants in the Other Suppliers sector present at that meeting abstained.

judgment regarding the merits of the comments received from Market Participants. Some comments from Market Participants and the NYISO provided Rudden with a better understanding of how the NYISO actually operates and, accordingly, triggered an adjustment to the preliminary results. After several iterations of this cycle with Market Participants, Rudden then made its independent, final recommendation to allocate 77 percent to Load and 23 percent to Supply. Rudden also supported the 80/20 proposal since it was reasonably close to Rudden's 77/23 recommendation.

III. Conclusion

The NYISO respectfully requests that the Commission accept this Answer. Furthermore, the NYISO requests that the Commission accept the tariff sheets submitted in the September 15 Filing.

Respectfully submitted,

/s/ Karen Georgenson Gach

Robert E. Fernandez, General Counsel and
Secretary

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Dated: October 21, 2004

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 (2004).

Dated at Albany, New York this 21st day of October, 2004.

By: /s/ Karen Georgenson Gach
Karen Georgenson Gach