

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

New York Independent System Operator, Inc.) Docket Nos. ER03-552-000, et al

**REQUEST FOR LEAVE
TO SUBMIT LIMITED ANSWER AND LIMITED ANSWER
OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests leave to submit a limited answer to the November 13, 2003, *Comments of the National Energy Marketers Association* (“NEM Comments”) filed in response to the NYISO’s October 23, 2003, compliance filing in the above captioned dockets.² The NYISO is submitting this filing for the limited purpose of providing additional information regarding issues raised by the NEM Comments that may be useful to the Commission and to correct certain inaccurate statements contained in the NEM Comments.

¹ 18 C.F.R. § 385.212 and 385.213 (2002).

² *Compliance Filing of New York Independent System Operator, Inc.*, Docket No. ER03-552-000, et al. and ER03-984-000 and ER03-984-001 (October 23, 2003) (“October 23 Filing”).

I. Copies of Correspondence

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II. Request for Leave to Submit Limited Answer

The NYISO recognizes that the Commission generally discourages answers to comments. The Commission has allowed such answers, however, 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.⁴ The NYISO has carefully limited the scope of its answer to comply with Commission precedent, and believes that its answer should be permitted because it clarifies issues before the Commission and corrects inaccuracies, thereby serving as an

³ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2001) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

⁴ See, e.g., *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.* 93 FERC ¶ 61,017, *slip op.* at 6 (accepting an answer that was “helpful in the development of the record...” (2000); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61,797 (allowing an answer deemed “useful in addressing the issues arising in these proceedings...” (2000); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,137 at 61,381 (1999) (accepting otherwise prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding).

important addition to the record in this proceeding. The NYISO therefore respectfully requests that the Commission exercise its discretion and accept the NYISO's limited answer.

III. Limited Answer

A. Prepayment v. Weekly Settlements

The National Energy Marketers Association ("NEM") incorrectly states that the proposed tariff revisions are silent on the scope of the payments that would be required pursuant to a prepayment agreement.⁵ NEM then goes on, not to seek clarification regarding the scope of a prepayment, but rather to urge the NYISO to "modify its proposal" to permit marketers to pay charges incurred in the "*previous seven (7) days*" rather than prepaying for service.⁶ NEM is not seeking clarification of the provision in question because no clarification is needed. Instead, NEM is making an untimely attempt to change the substance of this provision that was developed through an extensive stakeholder process and accepted by the Commission in its September 22, 2003, Order Conditionally Accepting Tariff Revisions ("September 22 Order").⁷

The prepayment provisions referenced by NEM clearly specify the scope of the payments that are required, stating that a customer may reduce the Energy and Ancillary Services Component of its Operating Requirement by executing a prepayment agreement pursuant to which the customer will make "weekly prepayments in amounts to be determined by the ISO for all purchases of Energy and Ancillary Services."⁸ Thus, the prepayment amount will be the

⁵ NEM Comments at 2.

⁶ *Id.* (Emphasis supplied.)

⁷ *New York Independent System Operator, Inc.*, 104 FERC ¶ 61,311 (2003).

⁸ See NYISO Open Access Transmission Tariff ("OATT"), Attachment W, Section III.C and NYISO Market Administration and Control Area Services Tariff ("Services Tariff"), Attachment K, Section III.C.

amount of the charges that the NYISO determines the customer is likely to incur in the coming week for purchases of Energy and Ancillary services.

The NEM Comments do not address the NYISO's October 23 Filing, but rather seek to advocate a shortened billing cycle that would allow customers to pay in arrears on a weekly basis, after services have been rendered. Furthermore, the NEM Comments fail to recognize that the September 22 Order already directs the NYISO to explore "additional ways of decreasing NYISO's proposed upfront collateral requirements though the use of more flexible settlement options" and to report on the results of those discussions within 180 days.⁹ The NEM Comments are untimely, amount to a collateral attack on the September 22 Order, and should be rejected by the Commission.

B. Prepayment v. Satisfaction of the Operating Requirement

NEM states in its comments that it is concerned about "...payment of twenty-five (25) days of total energy charges before it is delivered or used..."¹⁰ NEM is confusing security to support customer payments with the payments themselves. The Operating Requirement determines the amount of unsecured credit and/or collateral that the NYISO will require to support a customer's participation in the NYISO-administered markets. It does not determine the amount of a customer's actual charges nor does collateral provided in satisfaction of a customer's Operating Requirement amount to a payment of those charges.

In its September 22 Order, the Commission directed the NYISO to reduce the time period addressed by the Energy and Ancillary Services Component of the Operating Requirement of a

⁹ September 22 Order at ¶ 30.

¹⁰ NEM Comments at 3.

non-investment grade customer or an unrated customer from 90 to 50 days.¹¹ In its October 23 Filing, the NYISO complied with the Commission's directive, including making a conforming change to the prepayment provisions already accepted by the Commission that reduces by half the Energy and Ancillary Services Component of the Operating Requirement of a customer that executes a prepayment agreement. The Commission should reject the NEM Comments on this point because they mistakenly confuse security to support payments with the payments themselves and because they make an untimely attempt to revisit provisions already accepted by the Commission.

C. Minimum "A" Rating for a Surety

NEM objects to the NYISO's requirement that a surety bond be issued by a surety with a minimum 'A' rating from A.M. Best. NEM states that this requirement is unfair because it differs from the rating that is required of an affiliate guarantor. NEM fails to point out, however, that a minimum 'A' rating is equivalent to the rating required for banks issuing letters of credit to support participation in the NYISO-administered markets.

The rating requirement for a bank issuing a letter of credit and a surety issuing a bond reflects the fact that the NYISO is relying upon an unaffiliated third party to secure the obligations of a NYISO customer, and it is important that the third party clearly has adequate financial strength to do so. In the case of an affiliated corporate guarantor, the NYISO assesses the creditworthiness of the guarantor as if it were a NYISO customer to determine whether the NYISO will extend unsecured credit to the guarantor on behalf of its affiliate and, if so, how much.¹² Accordingly, the NYISO uses the same standard that it applies to its customers to make

¹¹ September 22 Order at ¶ 39.

¹² See OATT, Attachment W, Section IV.D and Services Tariff, Attachment K, Section IV.D.

this determination. Importantly, this process includes conducting a Credit Assessment of the guarantor, just as the NYISO would for a customer, to evaluate factors not measured by the affiliate guarantor's public rating and adjusting the amount of unsecured credit to be granted accordingly.

IV. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant its request for leave to submit a limited answer in this proceeding and reject the comments of NEM discussed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties listed on the official service list maintained by the Secretary of the Commission in docket numbers ER03-552-000, *et al*, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.2010 (2002).

Dated at Washington, D.C. this 26th day of November 2003.

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