

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

New York Independent System Operator, Inc.            )            Docket No. EL02-125-002

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

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 concerning its October 15, 2004 compliance filing in this proceeding (“October 15 Filing”). In the October 15 Filing, the NYISO submitted revised tariff sheets intended to implement the terms of a Settlement Agreement, conditionally approved by the Commission,<sup>1</sup> resolving the procedural issues raised in the course of this proceeding. The proposed tariff sheets amend the NYISO’s interconnection cost allocation rules contained in Attachment S to the NYISO Open Access Transmission Tariff. On November 1, 2004, the New York Power Authority (“NYPA”) submitted its Comment on Compliance Filing (“Comment”).

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

---

<sup>1</sup> *KeySpan Energy Development Corporation v. New York Independent System Operator, Inc.*, 108 FERC ¶ 61,201 (2004).

## **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.<sup>2</sup> This Answer satisfies those standards because it responds only to specific arguments raised by NYPA 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**

NYPA has proposed two changes to the tariff language submitted by the NYISO. The first of these, the inclusion of the word “generic” in the first sentence of Section IV.G.2.a (Fifth Revised Sheet No. 669), conforms to the Settlement Agreement. However, NYPA’s further proposed revision to Section IV.G.2.f (Original Sheet No. 669B) should be rejected because it directly conflicts with the terms and intent of the Settlement Agreement. This proposal amounts to a modification of the Settlement Agreement which was approved by the Commission and executed by the signatory parties, including NYPA.

NYPA’s Comment addresses the process to be used if the NYISO concludes that the Annual Transmission Baseline Assessment (“ATBA”) for a Class Year does not satisfy the

---

<sup>2</sup> 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 . . .”).

Applicable Reliability Requirements. Generally, the Settlement Agreement requires the NYISO to look at Class Year Developer projects first to determine whether they can provide the necessary solution to the reliability deficiency. If the Class Year Developer projects do not satisfy the Applicable Reliability Requirements, the NYISO is required to complete the development of generic solutions that may ultimately be included in the ATBA. The Settlement Agreement and the proposed tariff amendments then contemplate that an independent expert will review the feasibility of such generic solutions. *See* Settlement Agreement at Section II.A.2.b; Proposed Original Sheet No. 669B at Section IV.G.2.f. Contrary to NYPA's claim, the Settlement Agreement does not give the expert any role with respect to Class Year Developer projects selected by the NYISO for inclusion in the baseline.

NYPA proposes the following change to Section IV.G.2.f on proposed Original Sheet 669B:

The NYISO will submit its proposed generic solutions and the alternatives that it considered to Market Participants and to an independent expert for review and will make the results of the expert's review available to Market Participants. The independent expert shall review the proposed use of developer projects in accordance with the criteria set forth in Section IV.G.2.a, and the feasibility of other proposed generic solutions according to the criteria set forth in Section IV.G.2.e. (NYPA's proposed language emphasized)

By referencing the criteria contained in Section IV.G.2.a, NYPA's change would have the expert take the role of second-guessing the NYISO's determinations on the technical capability of a Class Year project to meet Applicable Reliability Requirements. Section IV.G.2.a requires a determination as to whether a Class Year Developer project meets the Applicable Reliability Requirements on a year by year basis. However, the Settlement Agreement expressly designates the NYISO as the only party responsible for making this determination. Section II.A.2.c of the Settlement Agreement states that "[t]he NYISO shall be responsible for determining whether any generic solution or proposed Developer Project meets Applicable

Reliability Requirements.” Thus, the Settlement Agreement allocated to the NYISO sole responsibility for all reliability determinations. In contrast, the Settlement Agreement and the NYISO’s proposed tariff language assign the expert a limited role in the evaluation of the feasibility of generics; the expert has no role in assessing reliability issues.

NYPA can point to nothing in the Settlement Agreement that would indicate that the parties intended an independent expert to review developer projects using the criteria set forth in Section IV.G.2.a. The tariff language proposed by the NYISO in this section was directly copied from the Settlement Agreement itself (Section II.A.2.g). In this section, “its proposed generic solutions and the alternatives it considered” refers to generic solutions developed by the NYISO or the Market Participants, not Class Year Developer projects. As a result, NYPA’s proposed language expands the function of the independent expert to include reliability review, a role expressly reserved to the NYISO under the Settlement Agreement.

### **III. Conclusion**

The NYISO respectfully requests that the Commission accept this Answer. Furthermore, the NYISO requests that the Commission reject the tariff language proposed by NYPA for Section IV.G.2.f on proposed Original Sheet 669B.

Respectfully submitted,

/s/ Karen Georgenson Gach

Robert E. Fernandez, General Counsel and  
Secretary

Elizabeth Grisaru, Senior Attorney

Karen Georgenson Gach, Senior Attorney

New York Independent System Operator, Inc.

290 Washington Ave. Extension

Albany, NY 12203

Tel: (518) 356-8875

Fax: (518) 356-8825

Dated: November 10, 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 10th<sup>st</sup> day of November, 2004.

By: /s/ Karen Georgenson Gach  
Karen Georgenson Gach

Submission Contents

NYISO\_Answer\_in\_EL02-125.doc..... 1-5