

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.)
) Docket No. ER09-1142-____
)

REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING
OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 8251, and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.713 (2009), the New York Independent System Operator, Inc. (“NYISO”) respectfully submits the following request for clarification or, in the alternative, rehearing of two specific instructions contained in the Commission’s November 20, 2009 *Order on Compliance Filing*, 129 FERC ¶ 61,164 (2009) (the “Order”).

I. Requests for Rehearing/Clarification

The NYISO will fully comply with the Commission’s Order. However, the NYISO requests clarification or, in the alternative, rehearing of the following directive that appears in paragraph 140 of the Order:

Further, as the entity responsible for reviewing and reporting on the wholesale markets, the MMU not the MMA must respond to information and data requests from the Commission. The tariff should reflect this as well.

The Commission has the authority to determine what entity should respond to an information or data request. However, the quoted language appears to preclude the NYISO’s internal Market Mitigation and Analysis Department (“MMA”) from responding even if that is the most appropriate source of the information. As the

regulator issuing the request, the Commission will determine which entity (the NYISO's external Market Monitoring Unit ("MMU") or the NYISO's internal MMA) is responsible for responding. The NYISO's concern is that the Commission's directive appears to absolutely preclude the MMA from ever directly responding to an information or data request from the Commission. The NYISO is not aware of any reason why the Commission should restrict its own flexibility in this manner.

If the Commission requests information from, or issues a data request to the NYISO's external MMU, then the MMU will be responsible for responding to the information or data request. The MMU may, or may not, request the NYISO's assistance in responding, depending on the particular facts and circumstances presented.¹ However, if the Commission directs a request for information to, or issues a data request to the MMA, or to a member of the MMA staff, then the MMA/NYISO will prepare a response to that data request.² Because the Commission has the ability to determine which entity is responsible for responding to a particular information request or data request simply by directing the request appropriately, the NYISO does not believe it is necessary to specify in the NYISO's Tariffs that the MMU must be the entity to respond to information and data requests from the Commission.

¹ For example, if a data request is issued to the MMU that relates to an investigation of the NYISO, itself, by the Commission's Office of Enforcement then the MMU would not discuss the data request with NYISO Staff unless it was authorized by Office of Enforcement Staff to do so. On the other hand, if the Commission Staff asks the MMU detailed questions about how the NYISO has implemented a particular mitigation measure in its software, the MMU may choose to speak with members of the MMA staff in order to be able to provide a complete response to the Commission.

² The MMA regularly requests review by, and seeks input from its MMU when it responds to information or data requests from the Commission. Staff from other NYISO departments are also regularly brought in to review, or even to respond to, information and data requests that the Commission staff issues to the MMA.

Because the Commission has not qualified the scope of this statement (it arguably applies to all information and data requests, without regard to the topic or purpose of the request), it also appears overbroad. As written, the statement can be interpreted as requiring the NYISO to add language to its Tariffs that would preclude MMA staff from ever directly responding to an information request or data request from the Commission Staff. The NYISO does not believe the Commission intended to restrict its own ability to effectively and directly communicate with the staff of the NYISO's MMA by requiring the NYISO to put in place Tariff rules that would prohibit the MMA staff from directly responding to information and data requests.

Finally, the NYISO already spends over a million dollars each year (not including the cost of NYISO staff time) responding to data requests from the Commission. Requiring the NYISO's MMU to respond to all Commission data requests, including requests that simply seek a specific data set covering a specific time period (*e.g.*, "provide all bids submitted by entity 'X' from January 1, 2005 to the present"), will require the NYISO to pay its external MMU to gather and produce information that could be gathered and produced at lower cost by the NYISO staff. The NYISO respectfully requests that the Commission not impose this type of financially inefficient arrangement via its order.

For the foregoing reasons, the NYISO requests that the Commission either (a) specifically identify a narrowly tailored subset of data requests that the MMU, alone, must respond to, or (b) eliminate the requirement that the NYISO add to its Market Monitoring Plan a statement that the MMU (not the MMA) must respond to information and data requests from the Commission, because this requirement is not necessary, may

restrict the Commission's ability to readily access information, and will result in unnecessary costs to the NYISO and its stakeholders.

II. Specifications of Error and Statement of Issues

Pursuant to Rule 713(c)(1) and (c)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(c)(1), (2) (2009), the NYISO respectfully submits the following specification of error and statement of issue:

1. If the Commission does not provide the NYISO's requested clarification of Paragraph 140 of its Order, then the Commission's decision to require the NYISO to add to its Market Monitoring Plan a statement that the NYISO's external Market Monitoring Unit (rather than its internal Market Mitigation and Analysis Department) must respond to (all) information and data requests from the Commission, is unjust and unreasonable, arbitrary and capricious, and does not constitute reasoned decisionmaking because (1) the requirement is unnecessarily and unjustifiably overbroad in its application and will unnecessarily and unreasonably restrict the Commission's ease of access to data regarding the NYISO's markets, (2) the Commission has not, and cannot, identify any evidence on the record in this proceeding that supports its determination that MMUs, alone, must respond to all Commission data requests, and (3) the requirement will impose significant additional costs on the NYISO without producing any identifiable corresponding improvement in the accuracy or efficiency of the responses to Commission information and data requests. The Commission should instead grant clarification or rehearing of Paragraph 140 of its Order and either (a) specifically identify a narrowly tailored subset of data requests that the MMU, alone, must respond to, or (b) eliminate the requirement that the NYISO add to its Market Monitoring Plan a statement that the MMU (not the MMA) must respond to information and data requests from the Commission, because this requirement is not necessary and will restrict the Commission's ability to readily access information.

III. Conclusion

The NYISO respectfully requests that the Commission grant the NYISO's requested clarifications of Paragraph 140 of its November 20, 2009 Order for the reasons specified above. In the alternative, the NYISO requests that the Commission grant rehearing of, and eliminate, the requirement that the NYISO add language to its Market Monitoring Plan specifying that the NYISO's MMU must respond to Commission information and data requests for the reasons set forth above.

Respectfully submitted,

/s/ Alex M. Schnell
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December 18, 2009

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 (2009).

Dated at Rensselaer, New York this 18th day of December, 2009.

By: /s/ Alex M. Schnell
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