UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER05-1290-000

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. (the "NYISO") hereby respectfully requests leave to submit a limited answer to the August 25, 2005, *Comments of the Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant New York-Gen, LLC* (the "Mirant Comments") filed by the Mirant Corporation ("Mirant") in response to the NYISO's August 4, 2005, compliance filing in the above captioned docket.[2] The NYISO is submitting this filing for the limited purpose of providing additional information regarding issues raised by the Mirant Comments that may be useful to the Commission and to correct certain inaccuracies contained in the Mirant Comments.

I. Copies of Correspondence

Communications regarding this proceeding should be addressed to:

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[1] 18 C.F.R. § 385.212 and § 385.213 (2005).

[2] *New York Independent System Operator, Inc.*, Docket No. ER05-1290-000, Filing of Revisions to Open Access Transmission Tariff (August 4, 2005) ("August Filing").

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, correct inaccurate statements,[3] 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 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. Service List

The NYISO will electronically serve a copy of this filing on the on the official service list compiled by the Secretary in Docket No. ER05-1290-000, the official representative of each of its customers, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will also make a paper copy available to any interested party that requests one.

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[3] *Southern Minnesota Municipal Power Agency*, 57 FERC ¶ 61,136 (1991).

[4] *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 . . .").

IV. Limited Answer

In its comments, Mirant requests clarification of the NYISO's proposed tariff revisions regarding the reentry of Developers into a Class Year. Mirant's concern appears to be based, at least in part, on a misunderstanding of the application of the proposed tariff revisions and the KeySpan Settlement. The NYISO agrees with Mirant's conclusion that entry into the Catch-Up Class does not constitute an election under proposed Section IV(G)(9)(c) of Attachment S. However, the NYISO would like to clarify the requirements of the KeySpan Settlement[5] and the rationale for not classifying entry into the Catch-Up Class as an election under proposed Section IV(G)(9)(c) of Attachment S.

The Mirant Comments describe the KeySpan Settlement as requiring the NYISO to place members of the Catch-Up Class into either Class Year 2005 or Class Year 2006.[6] This characterization does not accurately reflect the NYISO's obligations under the KeySpan Settlement, which specifically defines the Catch-Up Class to include all Developer Projects that have met the milestones identified in Section IV(F)(5)(a)(1) of Attachment S to the OATT on or before the Study Start Date.[7] Therefore, the Catch-Up Class is actually a class in itself, albeit a class containing Developer Projects spanning several calendar years. To be clear, as of the date of this filing, Class Year 2001, Class Year 2002, and the Catch-Up Class have closed. There is no Class Year 2005, and only one class, Class Year 2006, remains open.

The Mirant Comments request clarification of the NYISO's proposed tariff revisions regarding the assignment of Developers to Class Years, particularly for those Developers that

[5] *KeySpan Energy Development Corp. v. New York Independent System Operator, Inc.*, 108 FERC ¶ 61,201 (2004) (the "KeySpan Settlement") (p. 14).

[6] Mirant Comments, pp. 4-6.

[7] KeySpan Settlement, p. 14. The Study Start Date passed on June 27, 2005, which was thirty days after the NYISO's approval of the Manual revisions identified in the Settlement Agreement.

entered the Catch-Up Class pursuant to the KeySpan Settlement. The NYISO did not intend for the proposed tariff revisions to apply retroactively. Instead, the NYISO has requested that the Commission grant the revised tariff sheets submitted with the August Filing an effective date of October 3, 2005.[8] Accordingly, the entry or exit of *any* Developer into *any* class prior to October 3, 2005, shall not constitute an election or assignment under Section IV(G)(9)(c). Furthermore, Developer rejections of cost allocations or defaults on security posting requirements prior to October 3, 2005, do not constitute a "strike" under proposed Section IV(G)(9)(c).

V. 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 clarify the application of the NYISO's reentry rules as described herein.

Respectfully submitted,

NEW YORK INDEPENDENT
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[8] August Filing, p. 2.

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 No. ER05-1290-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.2010. The NYISO will also electronically serve a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania.

Dated at Washington, D.C., this 16th day of September 2005.

/s/ Catherine A. Karimi

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