

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

ISO New England Inc. and New)	Docket No. ER16-2451-000
England Power Pool)	
)	
)	

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE NEW YORK PUBLIC SERVICE COMMISSION**

INTRODUCTION

The New York Public Service Commission (NYPSC) seeks leave to file an Answer in support of a Motion and Answer submitted by the New York Independent System Operator, Inc. (NYISO) opposing filings made by other parties to this proceeding. The Answers of the NYISO and NYPSC will assist the Federal Energy Regulatory Commission in rendering a decision in this proceeding as they clarify factual misstatements made on the record.

PROCEDURAL HISTORY

On September 9, 2016, the NYPSC, NYISO, and other parties submitted comments and protests addressing proposed Transmission, Markets and Services Tariff amendments (Tariff Filing) filed by ISO New England Inc. (ISO-NE) and the New

England Power Pool (collectively, the Petitioners).¹ The Tariff Filing proposed changes that pertain to qualification requirements for Import Capacity Resources located in the New York Control Area (NYCA) that participate in ISO-NE's Forward Capacity Market (FCM) Reconfiguration Auctions (the RA Import Proposal). The NYPSC and NYISO submissions focused narrowly on the RA Import Proposal which, if implemented as proposed, would accelerate the earliest date by which generators in NYCA localities may commit exports of capacity into the ISO-NE market. The NYPSC and NYISO explained that the RA Import Proposal would reveal a market design flaw and harm the NYISO capacity market by significantly increasing capacity costs to New York customers by hundreds of millions of dollars. For this reason, the NYPSC and NYISO requested a modest delay in the effective date of the RA Import Proposal so that the NYISO and stakeholders could develop a comprehensive solution.

On September 26, 2016, certain parties filed answers opposing the narrowly-tailored deferral requested by the NYPSC and NYISO. The NYISO responded to those filings on October 12, 2016 by filing a Motion for Leave to Answer and Answer (NYISO Answer), and explained that the such filings contained arguments that included factual inaccuracies and/or mischaracterizations

¹ Docket No. ER16-2451-000, ISO New England Inc. and New England Power Pool, Tariff Filing (filed August 19, 2016).

that incorrectly describe (a) the ongoing stakeholder process that is developing a comprehensive solution to the pricing inefficiencies described above; (b) the Federal Energy Regulatory Commission's (Commission) legal authority to grant the requested deferral; and (c) the relation of existing Pivotal Supplier market power mitigation rules in the NYISO capacity market to the pricing inefficiencies revealed by the RA Import Proposal.

In particular, the NYISO Answer explained that certain parties inaccurately asserted that the NYISO and stakeholders are close to completing capacity market rule changes that would avoid the pricing inefficiencies caused by implementation of the RA Import Proposal on the date proposed by Petitioners. The NYISO explained that stakeholders are actively discussing potential solutions to the market design flaw revealed by the RA Import Proposal, but progress remains slow and a comprehensive, consensus solution is not imminent.

Certain parties argued that the Commission cannot grant the requested deferral because (i) the NYISO did not allege any harm to the ISO-NE market arising from the RA Import Proposal, and (ii) the design flaw is present in the NYISO capacity market rules, and not the ISO-NE FCM that is the subject of the Tariff Filing. The NYISO explained that the RA Import Proposal will trigger the pricing inefficiencies in the

New York capacity market, thereby providing a sufficient basis for Commission action.

The NYISO Answer also rebuts a claim that existing market mitigation rules applied to Pivotal Suppliers of capacity in New York would address the pricing inefficiencies created by the RA Import Proposal. The NYISO explained that this claim does not relate directly to the requested deferral, but does illustrate the need for additional time to address the various market issues implicated by the RA Import Proposal.

MOTION FOR LEAVE TO ANSWER

The NYPSC hereby submits this Motion for Leave to Answer and Answer in support of the NYISO Answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure.² For the reasons detailed herein, the NYPSC requests that the Commission grant this Motion for Leave to Answer, which corroborates the NYISO's characterization of an ongoing stakeholder process.³ The NYPSC is actively participating in this stakeholder process, and confirms that the process is advancing, although it does not appear that stakeholders are close to consensus on either a stop-gap solution - if needed

² 18 C.F.R. §385.212 and 385.213.

³ The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

because the Commission denies the requested deferral - or a permanent solution, if the deferral is granted.

The NYPSC further requests that the Commission accept the NYISO's Answer because it presents information that clarifies factual matters in the record. These clarifications are needed to ensure that the Commission avoids reaching a determination based on factual inaccuracies and mischaracterizations presented by other parties. Although answers to answers are generally discouraged, the Commission has accepted answers, similar to those provided here by the NYPSC, because they clarify the record and provide information that will assist the Commission in its decision making process.⁴

ANSWER

The market rules implicated by the RA Import Proposal are numerous and complex, and the pricing inefficiencies caused by the RA Import Proposal should not be remedied with a quick patch hastily developed to satisfy an arbitrary deadline that can be adjusted. The NYPSC is extremely concerned that the NYISO would be compelled to plug-in a quick patch if the request

⁴ See, e.g., Entergy Louisiana, LLC, 156 FERC ¶61,146 (issued August 31, 2016) at P5, 15 (accepting an Answer to a Motion for Leave to Answer because it provides information that assisted the Commission in its decision-making process); see also Michigan Electric Transmission Company, 156 FERC ¶61,025 (issued July 8, 2016) at P6, 14; Midcontinent Independent System Operator, Inc., 155 FERC ¶61,130 (issued May 3, 2016) at P7, 25.

for a modest delay in RA Import Proposal implementation is denied, and that the stop-gap solution could create more market issues than it solves.

The NYISO Answer also should be considered because it corrects certain inaccurate claims regarding the purpose and legality of the RA Import Proposal deferment sought by PSC and NYISO. Importantly, the NYISO estimated that the pricing inefficiencies caused by implementation of the RA Import Proposal on the date proposed by Petitioners would cause New York customers to incur hundreds of millions of dollars of increased capacity costs. The proposed deferral would avoid this unjust cost increase without interfering with implementation of all other FCM enhancements proposed in the Tariff Filing. Further, the proposed deferral would only have a small impact on the amount of import capacity available to the ISO-NE market on the accelerated date proposed. The potential harm to New York customers, therefore, outweighs the potential impact to market participants if the proposed deferral is granted.

It would be inappropriate for the Commission to decline the request for a modest delay of the RA Import Proposal based on a record that includes factual inaccuracies and/or mischaracterizations. The NYPSC, therefore, respectfully urges the Commission to grant the NYISO Motion for Leave to Answer,

and consider the corrections to the factual record presented in the NYISO Answer.

CONCLUSION

For the reasons described above, the NYPSC respectfully urges the Commission to grant the NYPSC and NYISO Motions for Leave to Answer, and consider the NYISO Answer. The NYISO Answer clarifies factual misstatements that (i) the requested deferral is not needed because the NYISO and stakeholders are close to a temporary, stop-gap solution that may be implemented quickly, (ii) the Commission lacks the legal authority to grant the requested deferral, which would not interfere with open and competitive markets, and (iii) existing market mitigation rules would address the pricing inefficiencies.

Respectfully submitted,

/s/ Paul Agresta

Paul Agresta
General Counsel
Public Service Commission
of the State of New York

S. Jay Goodman
Assistant Counsel
3 Empire State Plaza
Albany, New York 12223-1350
Tel: (518) 402-1537
jay.goodman@dps.ny.gov

Dated: October 14, 2016
Albany, New York

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.

Dated: Albany, New York
October 14, 2016

S. Jay Goodman

S. Jay Goodman
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 402-1537