

139 FERC ¶ 61,010
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 3, 2012

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket No. ER12-1322-000

New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

Attention: David Allen, Attorney, New York Independent System Operator, Inc.

Reference: Requested Waiver of Sections 5.12.11.1.1 and 5.12.11.1.2 of the Market
Administration and Control Area Services Tariff

Dear Mr. Allen:

1. On March 22, 2012, the New York Independent System Operator, Inc. (NYISO) filed a request for a limited waiver of sections 5.12.11.1.1 and 5.12.11.1.2 of its Market Administration and Control Area Services Tariff (Services Tariff) to allow NYISO to maintain the registration of certain Special Case Resources (SCR), i.e. demand response resources, in the Installed Capacity (ICAP) market during the Summer 2011 Capability Period, and treat the resources as if they had been properly registered, making them subject to all provisions applicable to such resources, including provisions on shortfalls and deficiency penalties. As discussed below, we grant the requested waiver.

2. The NYISO Services Tariff was amended by a Commission order issued on May 31, 2011¹ to provide new performance and measurement standards for SCRs that participate in the NYISO capacity market, and for the responsible interface parties (RIPs) that aggregate SCRs. The provisions apply new performance factor calculations to individual SCRs and RIPs, and performance deficiency payments to RIPs.

¹ *New York Indep. Sys. Operator, Inc.*, 135 FERC ¶ 61,020 (2011).

3. Under the new provisions, to determine the amount of load reduction available from SCRs, SCR baselines are calculated using the Average Coincident Load (ACL) methodology. Section 5.12.11.1.1 of the Services Tariff provides that the RIP must calculate the ACL for each SCR that it registers, with the exception of new SCRs. New SCRs submit provisional estimates of their ACL because they do not have historical metered data to determine their actual ACLs. It is the RIP's responsibility to provide NYISO with the ACL or Provisional ACL. Further, section 5.12.11.1.2 of the Services Tariff requires RIPs to provide NYISO with the actual ACL for any SCR previously enrolled with a provisional ACL in the preceding Capability Period. If the RIP fails to do so by a deadline, the ACL of such resource will be set to zero and the RIP may be subject to deficiency penalties. Section 5.12.11.1.2 also provides that NYISO will compare the Provisional ACL to the actual ACL to determine, after applying the applicable performance factor, whether the SCR oversold capacity. If the SCR was oversold, that is deemed a shortfall, and the RIP would be subject to a shortfall charge.

4. NYISO requests a limited waiver of section 5.12.11.1.1 and 5.12.11.1.2 of the Services Tariff. NYISO states that, beginning with the Summer 2011 Capability Period, RIPs were required to register SCRs utilizing either the SCR's actual ACL or its Provisional ACL. NYISO further states that for the Summer 2011 Capability Period, interim measures were put in place, with respect to the calculation of ACL, because necessary software changes could not be implemented until late September 2011. According to NYISO, it implemented the necessary software changes in time for the Winter 2011/2012 Capability Period and its software is now able to ensure that only SCRs that have never been previously enrolled with NYISO can be enrolled with Provisional ACLs.

5. With respect to the Summer 2011 Capability Period, NYISO states that while many RIPs successfully registered SCRs using ACL and Provisional ACL, as appropriate, 13 RIPs incorrectly registered a total of 199 SCRs with a Provisional ACL but those 199 SCRs had been previously enrolled for a prior Capability Period. NYISO adds that those SCRs participated in the Summer 2011 Capability Period, including performing during two ICAP/SCR events called for reliability reasons. In addition, NYISO states that one previously-enrolled SCR was improperly enrolled with a Provisional ACL for the Winter 2011/2012 Capability Period for a total of 200 SCRs improperly enrolled.² NYISO states that it became aware of these incorrectly registered

² NYISO states that this happened because the SCR had temporarily been isolated from the other enrollments at the time one aspect of the software was deployed and NYISO inadvertently did not identify it when it used the new software to examine SCRS that were registered with a Provisional ACL prior to the deployment.

SCRs on March 14, 2012, while reviewing SCR registrations prior to the upcoming deadlines for the Summer 2012 Capability Period.

6. NYISO requests a one-time waiver of sections 5.12.11.1.1 and 5.12.11.1.2 of its Services Tariff to allow it to treat the 200 SCRs that were incorrectly registered with Provisional ACLs as if they were correctly registered, and thus subject to all tariff provisions applicable to SCRs registered with Provisional ACLs. NYISO contends that absent a waiver, it will have to change the Summer 2011 and Winter 2011/2012 Capability Period data to exclude the erroneously enrolled SCRs from participation in the ICAP market during the respective Capability Period. In addition, according to NYISO, if the deregistration of an SCR for that period would result in an RIP having sold more capacity than it had registered, NYISO may have to impose a penalty on the RIP.

7. NYISO states that in order to undo the SCRs' participation for the applicable Capability Period, NYISO would have to, among other things, adjust the performance factors for the 200 SCRs and their corresponding RIPs, which is a complex process. Notwithstanding the administrative effort that would be necessary to remove these entities from the two past Capability Periods, NYISO states that it believes that removal of the 200 SCRs would not have a large impact on the market. NYISO adds that the requested tariff waiver will allow it to proceed with the Summer 2012 Capability Period without having to take the actions necessary to deregister the erroneously enrolled resources from the prior Capability Period, and perform corresponding recalculations of performance factors for the Summer 2012 Capability Period which will require coding, testing, and implementation of necessary modifications to NYISO's applicable software prior to the end of the May 2012 enrollment period on April 11, 2012.

8. NYISO further states that, absent the requested waiver, it would be unclear whether NYISO would be able to impose a shortfall charge or deficiency payments pursuant to section 5.12.11.1.2 if NYISO determines that the performance of any of these SCRs was below its Provisional ACL. According to NYISO, granting this waiver will prevent any negative impact to SCR participation that deregistration due to this type of inadvertent error may create.

9. NYISO also states that the underlying errors were made in good faith; training and information regarding the procedures were provided but a small number inadvertently failed follow the applicable procedures; and NYISO has no reason to believe that the error was intentional, given the shortfalls and penalties to which RIPs may be subject.

10. NYISO states that the waiver request is of limited scope. According to NYISO, the 199 SCRs and 13 RIPs are a small portion of all of the SCRs and RIPs that were resources in the ICAP market during the Summer 2011 Capability Period, which as of July 2011 included 5,390 SCRs and 35 RIPs. NYISO requests that the Commission explicitly provide that the waiver is limited to the specific and unique facts presented here

and does not constitute precedent allowing any market participant to avoid these or any other terms and conditions set forth in the Services Tariff. NYISO further states that the waiver will have no undesirable consequences and that NYISO is seeking it to prevent the undesirable consequences in the upcoming Summer 2012 Capability Period that deregistration would present. According to NYISO, deregistration of the subject SCRs will have undesirable market impacts to the SCRs that were affected by this error, which includes a maximum of 48.4 MW out of a total 2,209.5 MW, or 2.2 percent, of the SCR capacity in the Summer 2011 Capability Period.

11. Notice of NYISO's filing was issued with comments, protests, and interventions due on or before March 29, 2012. None were filed.

12. The Commission has previously granted Independent System Operators and Regional Transmission Organizations limited waivers of their own tariff provisions when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.³

13. We find that NYISO has demonstrated good cause to grant the request for limited tariff waiver because NYISO's requested waiver satisfies the aforementioned conditions. First, we find that NYISO has acted in good faith, and we have no reason to believe that the error by the SCRs and RIPs was intentional. NYISO explains that it only recently discovered the issue and NYISO is acting promptly. The tariff modifications were placed into effect prior to the development of the applicable software, and this transition period contributed to RIPs inadvertently registering existing SCRs as new, using Provisional ACLs.

14. Second, the requested waiver is of limited scope. The waiver applies to only a small number of all of the SCRs that were resources in the ICAP market for the Summer 2011 Capability Period, and the one RIP and one SCR that committed the error for the Winter 2011/2012 Capability Period. We find that the waiver is limited to the specific

³ See, e.g., *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *PJM Interconnection, LLC*, 137 FERC ¶ 61,109, at P 11 (2011); *PJM Interconnection, LLC*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO-NE*, 134 FERC ¶ 61,182, at P 8 (2011); *CAISO*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at P 9-10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

and unique facts presented here and does not constitute precedent allowing market participants to avoid these or any other conditions set forth in the Services Tariff.

15. Third, the waiver will remedy a concrete problem. Absent waiver, NYISO would have to make changes to Summer 2011 and Winter 2011/2012 Capability Period data to reflect the fact that erroneously enrolled SCRs would have not been properly registered for the respective Capability Period, and thus would not have been able to participate in the ICAP market during that time. Subtracting the participation of certain SCRs would necessitate adjusting the performance factors for the SCRs and corresponding RIPs, and would be a complex process. This would affect incorrectly enrolled SCRs and any new SCRs entering the market with any of the RIPs in question or any new market participants that are currently entering the market. In addition, if the deregistration of an SCR for that period would result in a RIP having sold more capacity than it had registered, NYISO may have to impose a penalty on the RIP. The waiver will allow NYISO to proceed with the Summer 2011 Capability Period without having to take the actions necessary to deregister the erroneously enrolled resources from the prior Capability Period, and perform corresponding recalculations of performance factor for the Summer 2012 Capability Period.

16. Fourth, we find that granting the waiver will not lead to undesirable consequences. The affected resources participated in the ICAP market and were called on for, and responded to, ICAP/SCR reliability-related events during the Summer 2011 Capability Period. Also, NYISO did not detect any difference in the response rate between these SCRs and the other SCRs that participated during the affected Capability Periods. Further, NYISO has asserted that removal of the 200 SCRs would not have a large impact on the market. Additionally, granting a waiver will prevent any negative impact to SCR participation that deregistration due to this error could create.

17. For the foregoing reasons, the Commission grants NYISO's request for limited waiver of sections 5.12.11.1.1 and 5.12.11.1.2 of its Services Tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.