

172 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

New York Independent System Operator, Inc.

Docket Nos. ER19-467-003
ER19-467-004

ORDER ON COMPLIANCE AND ADDRESSING ARGUMENTS
RAISED ON REHEARING

(Issued August 3, 2020)

1. On December 20, 2019, the Commission issued an order accepting in part and rejecting in part, subject to further compliance,¹ a filing that New York Independent System Operator, Inc. (NYISO) made to comply with the requirements of Order No. 841 (First Compliance Filing),² which removes barriers to the participation of electric storage resources in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations and Independent System Operators (RTO/ISO). On February 18, 2020, NYISO submitted proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT) to comply with the First Compliance Order (Second Compliance Filing).³ We accept NYISO's Second Compliance Filing, to become effective no later than September 30, 2020, subject to a further compliance filing, as discussed below.

¹ *N.Y. Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,225 (2019) (First Compliance Order).

² *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018), *order on reh'g*, Order No. 841-A, 167 FERC ¶ 61,154 (2019), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, No. 19-1142 (D.C. Cir. July 10, 2020).

³ Appendix A lists the Services Tariff and OATT sections filed by NYISO. Capitalized terms that are not defined in this order have the meaning specified in section 2 of the Services Tariff or section 1 of the OATT.

2. Rehearing has been timely requested of the First Compliance Order. Pursuant to *Allegheny Defense Project v. FERC*,⁴ the rehearing request filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a) of the Federal Power Act (FPA),⁵ however, we are modifying the discussion in the First Compliance Order and continue to reach the same result in this proceeding, as discussed below.⁶

I. Background

3. In Order No. 841, the Commission modified § 35.28 of its regulations⁷ to remove barriers to the participation of electric storage resources in RTO/ISO markets.⁸ The Commission found that Order No. 841 will enhance competition and, in turn, help to ensure that the RTO/ISO markets produce just and reasonable rates, pursuant to the Commission's legal authority under FPA section 206.⁹

4. Order No. 841 requires each RTO/ISO to revise its tariff to establish a participation model for electric storage resources consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, will help facilitate their participation in the RTO/ISO markets.¹⁰ Specifically, for each RTO/ISO, the tariff provisions for the participation model for electric storage resources must: (1) ensure that a resource using the participation model is eligible to provide all capacity, energy, and ancillary services that it is technically capable of providing in the RTO/ISO markets; (2) ensure that a resource using the participation model can be dispatched and can set the

⁴ *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁵ 16 U.S.C. § 825l(a) (2018) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

⁶ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the First Compliance Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ 18 C.F.R. § 35.28 (2019).

⁸ Order No. 841, 162 FERC ¶ 61,127 at P 1.

⁹ 16 U.S.C. § 824e (2018).

¹⁰ Order No. 841, 162 FERC ¶ 61,127 at P 3. In Order No. 841, the Commission referred to a set of tariff provisions that are created for a particular type of resource as a participation model. *Id.*

wholesale market clearing price as both a wholesale seller and wholesale buyer consistent with existing market rules that govern when a resource can set the wholesale price; (3) account for the physical and operational characteristics of electric storage resources through bidding parameters or other means; and (4) establish a minimum size requirement for participation in the RTO/ISO markets that does not exceed 100 kW. Additionally, each RTO/ISO must specify that the sale of electric energy from the RTO/ISO markets to an electric storage resource that the resource then resells back to those markets must be at the wholesale locational marginal price.¹¹

5. On December 3, 2018, as amended on May 1, 2019 and May 31, 2019, NYISO filed its First Compliance Filing. On December 20, 2020, in the First Compliance Order, the Commission accepted in part and rejected in part the First Compliance Filing, subject to a further compliance filing.

6. In the First Compliance Order, the Commission directed NYISO to: (1) remove all tariff language related to reinstating the buyer-side mitigation rules related to Category III Examined Facilities in proposed Services Tariff section 23;¹² (2) revise its tariff to provide a process for Energy Storage Resources¹³ to de-rate their capacity to meet the four-hour minimum run-time qualification requirement;¹⁴ (3) remove the requirement that Energy Storage Resources that are Installed Capacity Suppliers must elect the ISO-Managed Energy Level bidding parameter for each day-ahead market bid, and designate the Energy Storage Resource as the default manager of the resource's State of Charge;¹⁵ (4) file tariff revisions that apply transmission charges to Energy Storage

¹¹ *Id.* P 4.

¹² The Commission rejected NYISO's proposal to reinstate Category III Examined Facilities in its buyer-side mitigation rules because that proposal would apply to all new Generators that are 2 MW or less and therefore was beyond the scope of this compliance proceeding. First Compliance Order, 169 FERC ¶ 61,225 at P 73.

¹³ NYISO proposed to define Energy Storage Resources to include "Generators that receive Energy from the grid at a specified location, and are capable of storing that Energy, for later injection back onto the grid at the same location. Resources that cannot inject Energy onto the grid cannot be Energy Storage Resources. In order to qualify for wholesale market participation, Energy Storage Resources must be able to inject at a rate of at least 0.1 MW for a period of at least one hour. Energy Storage Resources are Withdrawal-Eligible Generators." *Id.* P 21 (citing First Compliance Filing, Transmittal at 12-13; proposed Services Tariff, § 2.5).

¹⁴ The Commission found that NYISO did not include tariff provisions that provide a process for Energy Storage Resources to de-rate their capacity to meet minimum run-time requirements. *Id.* P 95.

Resources when they are charging for later resale in wholesale markets, but are not being dispatched to provide a service, and explain how such charges would be calculated;¹⁶ (5) file tariff revisions to state that NYISO will not charge distribution-connected electric storage resources for charging energy if the distribution utility is unwilling or unable to net out any energy purchases associated with an electric storage resource's wholesale charging activities from the host customer's retail bill;¹⁷ (6) submit tariff revisions to include a basic description of NYISO's metering methodology and accounting practices for Energy Storage Resources, as well as references to the specific documents in the ISO Procedures that contain the implementation details;¹⁸ and (7) submit a further compliance filing that proposes an effective date for its Order No. 841 compliant tariff revisions that is no later than May 1, 2020.¹⁹

II. Second Compliance Filing

7. In its Second Compliance Filing, NYISO proposes revisions to its OATT and Services Tariff to comply with the Commission's directives in the First Compliance Order. NYISO states that it also filed tariff revisions in Docket No. ER20-638-000 to, among other things, remove all tariff language related to reinstating Category III Examined Facilities in its buyer-side mitigation rules, which the Commission accepted on January 31, 2020.²⁰ NYISO states that the removal of this tariff language in Docket No. ER20-638-000 satisfies the Commission's directive in the First Compliance Order to remove this tariff language.²¹ NYISO proposes revisions to Services Tariff

¹⁵ *Id.* P 175. The Commission found that NYISO's proposal to require Energy Storage Resources that are Installed Capacity Suppliers to use the ISO-Managed Energy Level in their day-ahead market bids did not comply with the requirement in Order No. 841 "to allow resources using the participation model for electric storage resources to self-manage their state of charge." *Id.* P 172 (citing Order No. 841, 162 FERC ¶ 61,127 at P 253).

¹⁶ *Id.* P 189.

¹⁷ The Commission found that NYISO did not adequately demonstrate that the proposed metering and accounting practices will be sufficient to prevent double payment for charging energy at the retail and wholesale levels. *Id.* P 200.

¹⁸ The Commission found that these metering methodology and accounting practices significantly affect rates, terms, and conditions and should be included in the tariff. *Id.* P 201.

¹⁹ *Id.* P 223.

²⁰ Second Compliance Filing, Transmittal at 4; see *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-638-000, at 2 (Jan. 31, 2020) (delegated order).

section 5.12.1.13 to allow Energy Storage Resources to de-rate its maximum capability in order to meet the four consecutive hour minimum run-time requirement.²² In addition, NYISO proposes tariff revisions to strike the previously proposed requirement that an Energy Storage Resource elect the ISO-Managed Energy Level bid parameter in its Day-Ahead Market Bid²³ and to revise Services Tariff section 4.2.1.3.4 to identify the Supplier as the default manager of an Energy Storage Resource's Energy Level.²⁴

8. NYISO states that in the event that the Commission does not grant its request for rehearing on the transmission charges issue, it proposes tariff revisions to ensure that electric storage resources will be subject to transmission charges (i.e., the Transmission Service Charge (TSC) and Transmission Adjustment Charge (NTAC)) for their actual energy withdrawals, in the real-time market, when the resources are not providing a service.²⁵

9. NYISO also proposes to add new Services Tariff section 7.2.8 to address situations in which the distribution utility is unwilling or unable to net out from a customer's retail invoice Energy Storage Resource withdrawals for wholesale market participation.²⁶ Regarding its metering and accounting practices, NYISO proposes revisions to Services Tariff section 13.2.4 to require that: (1) Energy Storage Resources, electrically located behind the same point of interconnection, must be directly metered;²⁷ (2) meter data for

²¹ In NYISO's Second Compliance Filing, NYISO submits as Attachments V and VI, respectively, redlined and clean versions of Services Tariff sections 23.2.1 and 23.4.5.7 reflecting the removal of all tariff language related to reinstating Category III Examined Facilities in its buyer-side mitigation rules.

²² NYISO notes that the specific Dependable Maximum Net Capability (DMNC) testing procedures for all ICAP Suppliers are located in section 4 of the Installed Capacity Manual, which has been updated to include specific testing procedures for Energy Storage Resources consistent with the tariff revisions that it proposes. Second Compliance Filing, Transmittal at 5-6.

²³ See proposed Services Tariff, § 5.12.1.13; Second Compliance Filing, Transmittal at 6 n.25.

²⁴ Second Compliance Filing, Transmittal at 6 n.26.

²⁵ *Id.* at 8.

²⁶ NYISO explains that the credit will be calculated as the product of the Actual Energy Withdrawals of the Energy Storage Resource and the time weighted average Real-Time Market LBMP for the hour at the Energy Storage Resource's generator bus (i.e., location). *Id.* at 10.

Energy Storage Resources must be submitted in two sets (i.e., one for injections and one for withdrawals);²⁸ and (3) the meter authority must exclude the Energy withdrawals and injections from the total Load of the co-located facility.²⁹

10. Regarding the dual participation of Energy Storage Resources in NYISO's wholesale markets and retail programs, the Commission found that NYISO did not comply with Order No. 841 because its proposed tariff revisions did not allow electric storage resources to use the electric storage resource participation model if they also participate in retail markets.³⁰ However, in the First Compliance Order, the Commission noted that on June 27, 2019, in Docket No. ER19-2276-000, NYISO submitted a proposal under FPA section 205 to allow participation by all resources in its wholesale and retail markets, effective May 1, 2020. The Commission therefore decided to defer further action on NYISO's Order No. 841 compliance directive to allow dual participation in wholesale and retail markets until the Commission took action on the merits of NYISO's proposal filed in Docket No. ER19-2276-000.³¹ In its Second Compliance Filing, NYISO states that the Commission accepted NYISO's proposal in Docket No. ER19-2276-000, which addresses the Commission's concern identified in this proceeding, and therefore no additional NYISO action is required on this compliance directive.³²

III. Notice of Filing

11. Notice of NYISO's Second Compliance Filing was published in the *Federal Register*, 85 Fed. Reg. 10,669 (Feb. 25, 2020), with interventions and protests due on or before March 10, 2020. None was filed.

12. On July 17, 2020, NYISO filed a motion requesting Commission action by August 4, 2020 on its Second Compliance Filing and its request for rehearing (Motion). NYISO

²⁷ Proposed Services Tariff, § 13.2.4.1.

²⁸ *Id.* § 13.2.4.2.

²⁹ *Id.* § 13.2.4.3. NYISO's proposed Services Tariff section 13.2.4.3 also provides that additional information related to metering requirements for Energy Storage Resources are included in Manual 25 (Revenue Meter Requirements), Manual 14 (Accounting and Billing) and Manual 21 (Control Center Requirements).

³⁰ First Compliance Order, 169 FERC ¶ 61,225 at P 207.

³¹ *Id.* P 208.

³² Second Compliance Filing at 13; *see N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,033 (2020).

states that it anticipates that it will be able to implement its participation model for Energy Storage Resources effective (following NYISO's submission of a required two week advance notice to the Commission and its stakeholders) between August 19, 2020 and September 30, 2020.³³ According to NYISO, Commission action on its Second Compliance Filing and on its rehearing request prior to implementation of its participation model would avoid significant uncertainty regarding the transmission charges that NYISO will assess when Energy Storage Resources withdraw energy.

IV. Discussion

A. Request for Rehearing

1. Transmission Charges

a. Order Nos. 841 and 841-A

13. In Order No. 841, the Commission found that, when an electric storage resource is withdrawing energy to resell at a later time, then its behavior is similar to other load and applicable transmission charges should apply.³⁴ However, the Commission found that electric storage resources should not be assessed transmission charges when they are dispatched by an RTO/ISO to provide a service (such as frequency regulation or a downward ramping service).³⁵ In Order No. 841-A, the Commission clarified that the Commission's use of the phrase "applicable transmission charges" was intended to convey that an RTO/ISO may propose to apply its existing rate structure for transmission charges to an electric storage resource that is charging at wholesale but is not being dispatched by the RTO/ISO to provide a service in the RTO/ISO markets.³⁶ The Commission further clarified that, on compliance, each RTO/ISO may propose that any electric storage resource that is charging for the purpose of participating in an RTO/ISO market but is not being dispatched by the RTO/ISO to provide a service should be assessed charges consistent with how the RTO/ISO assesses transmission charges to wholesale load under its existing rate structure.³⁷ The Commission also stated that, if an RTO/ISO proposes not to apply transmission charges to an electric storage resource that is charging at wholesale but is not being dispatched by the RTO/ISO to provide a service,

³³ Motion at 1-2.

³⁴ Order No. 841, 162 FERC ¶ 61,127 at P 297.

³⁵ *Id.* P 298.

³⁶ Order No. 841-A, 167 FERC ¶ 61,154 at P 121.

³⁷ *Id.*

then the RTO/ISO must demonstrate that exempting such a resource from these charges is “reasonable given its existing rate structure for transmission charges.”³⁸

b. First Compliance Order

14. In the First Compliance Order, the Commission found that NYISO’s proposal to exempt all electric storage resource withdrawals of energy from transmission charges because they are “negative generation” and not load did not comply with the requirements of Order Nos. 841 and 841-A with respect to the application of transmission charges to electric storage resources.³⁹ The Commission explained that Order No. 841 requires that the applicable transmission charges that apply to load should apply to electric storage resources because when an electric storage resource is charging to resell energy at a later time, its behavior is similar to other load-serving entities. The Commission found that NYISO did not comply because its proposal exempted Energy Storage Resources that are charging for later resale from transmission charges that are applicable to other load, and NYISO did not show, as required in Order No. 841-A, that its proposal is reasonable given how NYISO assesses transmission charges to wholesale load under NYISO’s existing rate structure.⁴⁰ The Commission also rejected NYISO’s argument that, because transmission charges assessed to load are calculated at the zonal level, NYISO cannot assess transmission charges to electric storage resource withdrawals. The Commission directed NYISO to file a further compliance filing with tariff revisions that apply transmission charges to electric storage resources when a resource is charging for later resale in wholesale markets but is not being dispatched by the RTO/ISO to provide a service.⁴¹

c. Rehearing Request

15. NYISO argues that the Commission erred in requiring NYISO to assess transmission charges to Energy Storage Resources that are charging for later injection to the grid.⁴² NYISO maintains that its proposed approach, in the First Compliance Filing, to not assess transmission charges aligns with its existing rate structure for transmission charges assessed to resources in the New York Control Area (NYCA) that withdraw energy at a node for later injection to the grid, and is therefore consistent with the Commission’s directives in Order Nos. 841 and 841-A.⁴³

³⁸ *Id.*

³⁹ First Compliance Order, 169 FERC ¶ 61,225 at P 187.

⁴⁰ *Id.* P 189.

⁴¹ *Id.*

⁴² Rehearing Request at 3.

16. Specifically, NYISO explains that it has “applied a separate rate structure for transmission charges applicable to the pumped storage resource operating in the NYCA.”⁴⁴ NYISO states that the Blenheim-Gilboa Pumped Storage Power Project (the Gilboa facility) is a pumped storage facility located at a single Generator bus that pays the nodal Locational Based Marginal Price (LBMP) to withdraw energy as a “negative injection” for later injection back to the grid.⁴⁵ NYISO seeks to apply “the same transmission charge requirements that it has applied for more than 20 years to the existing, nodal energy resource in New York (the Gilboa facility) to all nodal Energy Storage Resources in the NYCA.”⁴⁶

17. According to NYISO, the Gilboa facility is not assessed the TSC or the New York Power Authority (NYPA) NTAC for negative generation in the real-time market because negative injections at a generator bus have never been treated as load for dispatch or settlement purposes.⁴⁷ NYISO therefore argues that requiring NYISO (or a New York transmission owner) to assess load-side transmission charges (i.e., the TSC and the NTAC) to Energy Storage Resources would be inconsistent with NYISO’s existing rate structure for transmission charges.⁴⁸

18. NYISO also argues that assessing the TSC and NTAC to Energy Storage Resources while they are withdrawing energy can result in double charging the TSC and NTAC to loads. NYISO states that if it is required to assess the TSC and NTAC to Energy Storage Resources when they are withdrawing energy from the grid for later injection to the grid, but not simultaneously providing a service to NYISO’s markets, then NYISO expects that the Energy Storage Resource would include the TSC and NTAC costs in its energy bids in order to recover the additional costs assessed to its energy withdrawals.⁴⁹ NYISO states that when the Energy Storage Resource that incorporates the TSC and NTAC costs in its energy bids is the marginal resource in NYISO’s dispatch of energy, loads in the NYCA would effectively be paying the TSC and NTAC twice—once as part of the energy component of LBMP and again when NYISO and the relevant New York transmission owner assess the TSC and NTAC to the

⁴³ *Id.* at 3, 6.

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 7-8.

⁴⁶ *Id.* at 10-11.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 9-11.

⁴⁹ *Id.* at 11.

loads.⁵⁰ NYISO posits that “[i]t is not clear . . . that this will produce a just and reasonable result under the NYISO’s existing rate structure.”⁵¹

19. Further, NYISO argues that the Commission’s rejection of NYISO’s proposal is inconsistent with the Commission’s acceptance of the California Independent System Operator Corporation’s (CAISO) proposal, which exempts all electric storage resources from transmission charges when charging consistent with CAISO’s existing rate structure.⁵²

d. Commission Determination

20. We are not persuaded by NYISO’s request for rehearing and continue to find that NYISO has not demonstrated, as required in Order No. 841-A, that NYISO’s proposal not to apply transmission charges to all Energy Storage Resources is reasonable given how it assesses transmission charges to wholesale load under its existing rate structure.⁵³ As a general matter, NYISO assesses transmission charges to all wholesale load, and it only declines to assess transmission charges to the withdrawals by one specific pumped storage facility when that facility is participating under the Energy Limited Resource (ELR) model.⁵⁴ Thus, NYISO’s proposal not to apply transmission charges to any Energy Storage Resource is not consistent with or reasonable given its existing rate structure, as contemplated by Order No. 841-A.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 5. NYISO points to the Commission’s finding that “CAISO’s existing rate structure accounts for [non-generation resource (NGR)] charging as negative generation. . . . As a result, CAISO does not assess transmission access charges, which only apply to load, to NGR charging, regardless of the reason for the NGR’s negative generation.” *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, 169 FERC ¶ 61,126, at P 137 (2019)).

⁵³ First Compliance Order, 169 FERC ¶ 61,225 at PP 187, 189.

⁵⁴ See NYISO Services Tariff, § 4.1.2 (“Each Customer that utilizes Market Services also utilizes Transmission Service and shall obtain Transmission Service under the ISO OATT”); see also NYISO OATT, § 6.9, sched. 9 (Network Integration Transmission Service) (applying transmission charges to withdrawals). Although section 6.9 of the OATT does not exempt the withdrawals of pumped storage facilities from transmission charges, NYISO bases its case for not assessing transmission charges to electric storage resources on Section 1.9 of its OATT, which does not include transmission charges in the list of charges it applies to pumped storage resources. See NYISO OATT, § 1.9 (Definitions – Injection Billing Units).

21. We also disagree with NYISO's assertion that the Commission's acceptance of CAISO's proposal on compliance with Order No. 841 as clarified in Order No. 841-A, which exempted all electric storage resources from transmission charges when charging consistent with CAISO's existing rate structure, requires us to reach a different result here. Unlike CAISO's non-generator resource (NGR) model, which was designed for electric storage resources,⁵⁵ NYISO's ELR model is designed for and primarily used by generators.⁵⁶ Indeed, NYISO withdrew its ELR model from consideration for compliance with Order No. 841 because, according to NYISO, the ELR model could not accommodate withdrawals from electric storage resources.⁵⁷ Thus, NYISO's treatment of one pumped storage facility under the ELR model is a limited exception⁵⁸ and is not representative of how NYISO assesses transmission charges to wholesale load under its existing rate structure. In contrast, CAISO's NGR tariff provisions were created specifically for battery-based storage technologies that withdraw energy, and explicitly provide that electric storage resource withdrawals will be treated as negative generation.⁵⁹ In contrast to NYISO's prior treatment of one pumped storage facility,⁶⁰ CAISO did not assess transmission charges to the energy

⁵⁵ See *Cal. Indep. Sys. Operator Corp.*, 169 FERC ¶ 61,126, at P 30 (2019) (accepting NGR model).

⁵⁶ Energy Limited Resources are "Capacity resources, not including BTM:NG Resources, that, due to environmental restrictions on operations, cyclical requirements, such as the need to recharge or refill, or other non-economic reasons, are unable to operate continuously on a daily basis, but are able to operate for at least four consecutive hours each day. Energy Limited Resources must register their Energy limiting characteristics with, and justify them to, the ISO consistent with ISO Procedures." See NYISO Services Tariff, § 2.5, Definitions – E.

⁵⁷ First Compliance Order, 169 FERC ¶ 61,225 at P 36.

⁵⁸ NYISO states that the Gilboa facility is the only pumped storage facility in the NYCA that is able to withdraw energy from the grid as negative energy to fill its reservoirs. NYISO Data Request Response at 33 (May 1, 2019, in Docket No. ER19-467-001). NYISO states that the Gilboa facility is currently the only electric storage resource in the NYCA that is optimized in NYISO's dispatch. Rehearing Request at 8. NYISO specifies that the Gilboa facility is not an Energy Storage Resource. *Id.* at 8 n.24.

⁵⁹ CAISO Tariff, § 11.6.5 (0.0.0) ("When operating in a negative range between PMin and 0, CAISO will not consider a Non-Generator Resource or a resource using Non-Generator Resource Generic Modeling functionality as Measured Demand so long as the resource can generate Energy.").

⁶⁰ We note that NYISO is not unique in exempting pumped storage facilities from transmission charges. For instance, under its legacy pumped-hydro model, PJM

withdrawals of any NGRs under its existing rate structure. Therefore, CAISO's proposal on compliance with Order No. 841 to continue that practice is consistent with its existing rate structure, and thus is consistent with requirements of Order No. 841 as clarified in Order No. 841-A.⁶¹

22. We also disagree with NYISO's argument that assessing transmission charges to Energy Storage Resources while they are withdrawing energy could result in an unjust and unreasonable rate through a double payment of the TSC and NTAC. As an initial matter, we find that NYISO's argument is a collateral attack on Order Nos. 841 and 841-A, which found that when an electric storage resource is withdrawing energy to resell at a later time, then its behavior is similar to other load and applicable transmission charges should apply. Accordingly, NYISO's argument is, in essence, a late-filed request for rehearing of Order No. 841 and is statutorily barred.⁶² Notwithstanding this procedural flaw, NYISO's argument is also unpersuasive on the merits. We do not find the assessment of transmission charges twice in this instance to be unjust and unreasonable because the electric storage resource uses the transmission system once in withdrawing energy for later injection and wholesale load again uses the transmission system when withdrawing that same energy for resale to end-use customers. Accordingly, two different transactions occur: one that entails the electric storage resource purchasing charging energy at wholesale from the RTO/ISO market and another that entails wholesale load purchasing energy from the electric storage resource via the RTO/ISO energy market. As such, we find that it is reasonable to apply transmission charges to both the electric storage resource and the loads associated with those separate transactions, and for load to ultimately pay the two transmission charges.

23. For all of these reasons, we disagree with NYISO's rehearing request on the transmission charges issue and, as set forth below, we accept NYISO's proposed revisions to the OATT that require NYISO to assess the TSC and NTAC to electric storage resources for their Actual Energy Withdrawals⁶³ from the real-time energy market, when the resources are not providing a service.⁶⁴

Interconnection, L.L.C. treats large Pumped Hydro Storage Units as generators and does not assess transmission charges to them. However, resources utilizing PJM's electric storage resource participation model will be subject to the proposed transmission charges applicable to purchases of certain charging energy. *See* PJM Compliance Filing at 16-18, 30, Docket No. ER19-469-000 (filed Dec. 3, 2018). NYISO is not prevented from continuing its current practice of not assessing transmission charges to its pumped storage facility participating in the ELR model.

⁶¹ *Cal. Indep. Sys. Operator Corp.*, 169 FERC ¶ 61,126, at P 138 (2019); *see* Order No. 841-A, 167 FERC ¶ 61,154 at P 121.

⁶² 16 U.S.C. § 825l(a) (2018); *see also* 18 C.F.R. § 385.713(b) (2019).

2. Effective Date for Compliance Filing

24. NYISO seeks rehearing of the Commission's directive in the First Compliance Order that NYISO must propose an effective date for its Order No. 841 compliant tariff revisions that is no later than May 1, 2020.⁶⁵ After filing its rehearing request, NYISO filed a motion requesting an extension of the effective date that NYISO may propose in its further compliance filing to a date no later than September 30, 2020.⁶⁶ The Commission granted NYISO's motion and extended the deadline for the implementation of NYISO's Order No. 841 compliance tariff revisions up to no later than September 30, 2020.⁶⁷ Accordingly, we dismiss as moot the portion of NYISO's rehearing request alleging error in the Commission's directive that NYISO propose an effective date for its compliance filing that is no later than May 1, 2020.

B. Second Compliance Filing

25. As discussed below, we accept NYISO's Second Compliance Filing, to become effective no later than September 30, 2020, consistent with the Notice Extending Time, subject to a further compliance filing to be submitted within 90 days of the date of issuance of this order.

26. As a preliminary matter, we find that NYISO has complied with the following directives in the First Compliance Order by: (1) removing all tariff language related to reinstating Category III Examined Facilities as proposed in the First Compliance Filing;⁶⁸ (2) permitting Energy Storage Resources to de-rate their maximum capability to meet the four-hour minimum-run-time requirement;⁶⁹ (3) eliminating the requirement that Energy

⁶³ See NYISO OATT, § 1.1 (Actual Energy Withdrawals include Energy withdrawals measured with a revenue-quality real-time meter).

⁶⁴ See proposed OATT, §§ 2.7.2.1.5 and 2.7.2.4.4, respectively.

⁶⁵ Rehearing Request at 5.

⁶⁶ *N.Y. Indep. Sys. Operator, Inc.*, Motion to Extend Effective Date of Compliance Tariff Revisions, Docket No. ER19-467-000 (Feb. 14, 2020).

⁶⁷ *N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER19-467-000 (issued Mar. 5, 2020) (Notice Extending Time). Consistent with NYISO's motion, the Commission also directed NYISO to provide the Commission and market participants at least two weeks' notice prior to the requested effective date. *Id.*

⁶⁸ Proposed Services Tariff, §§ 23.2.1, 23.4.5.7.

⁶⁹ *Id.* § 5.12.1.13.

Storage Resources elect the ISO-Managed Energy Level bidding parameter for each day-ahead market bid,⁷⁰ and designating the Energy Storage Resource as the default manager of the resource's State of Charge;⁷¹ (4) ensuring that Energy Storage Resources will be subject to the TSC and NTAC for their actual Energy Withdrawals when they are providing a service;⁷² (5) addressing situations where the distribution utility is unwilling or unable to net out any energy purchases associated with an electric storage resource's wholesale;⁷³ and including a basic description of its metering methodology and accounting practices for electric storage resources.⁷⁴ As described above, the Commission accepted NYISO's proposal regarding dual participation of Energy Storage Resources in Docket No. ER19-2276-000.⁷⁵ We address all remaining compliance requirements below.

1. Transmission Charges

a. First Compliance Order

27. As noted above, in the First Compliance Order, the Commission directed NYISO to file a further compliance filing with tariff revisions that apply transmission charges to electric storage resources when a resource is charging for later resale in wholesale markets but is not being dispatched by the RTO/ISO to provide a service, and explain how such charges would be calculated.⁷⁶

b. Second Compliance Filing

28. In the event that the Commission does not grant its request for rehearing on the transmission charges issue, NYISO proposes tariff revisions to ensure that electric storage resources will be subject to transmission charges (i.e., the TSC and NTAC) for their actual energy withdrawals, in the real-time market, when the resources are not providing a service.⁷⁷ NYISO proposes that the Energy Storage Resource will be

⁷⁰ *Id.*

⁷¹ Proposed Services Tariff, § 4.2.1.3.4.

⁷² Proposed OATT, §§ 2.7.2.1.5, 2.7.2.4.4.

⁷³ Proposed Services Tariff, § 7.2.8.

⁷⁴ *Id.* §§ 13.2.4.1, 13.2.4.2, 13.2.4.3.

⁷⁵ *See N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,033, at P 51 (2020).

⁷⁶ First Compliance Order, 169 FERC ¶ 61,225 at P 189.

⁷⁷ Second Compliance Filing, Transmittal at 8.

providing a service, and therefore will be exempt from transmission charges, when the resource: (1) receives a real-time Operating Reserves schedule; (2) receives a real-time Regulation Service schedule; (3) is operating and is a qualified supplier of Voltage Support Service; or (4) is dispatched as Out-of-Merit to meet NYCA or local system reliability.⁷⁸

c. Commission Determination

29. We accept NYISO's proposed tariff revisions to ensure that electric storage resources will be subject to transmission charges, to become effective no later than September 30, 2020, subject to a further compliance filing to be submitted within 90 days of the date of issuance of this order. However, we require NYISO to clarify its proposed revisions that would exempt certain withdrawals by Energy Storage Resources from transmission charges. As the Commission found in Order No. 841 and Order No. 841-A, when an electric storage resource is dispatched to withdraw energy to provide a service, it should not be assessed transmission charges.⁷⁹ The Commission clarified that such services could include any service defined in an RTO/ISO tariff and are not limited to ancillary services in the RTO's/ISO's OATT.⁸⁰

30. NYISO proposes not to assess transmission charges to Energy Storage Resources when the resource: (1) receives a real-time Operating Reserves schedule; (2) receives a real-time Regulation Service schedule; (3) is operating and is a qualified supplier of Voltage Support Service; or (4) is dispatched as Out-of-Merit to meet NYCA or local system reliability. We accept NYISO's proposal to exempt Energy Storage Resources from transmission charges when they are dispatched to provide these services, all of which are defined in NYISO's tariffs.⁸¹ However, because these services are typically scheduled on top of a resource's base energy schedule, it is unclear what portion of a resource's MW withdrawals NYISO proposes to exempt from transmission charges. Thus, we direct NYISO to submit a further compliance filing, within 90 days of the date of issuance of this order, which includes tariff revisions clarifying that NYISO will apply transmission charges to an electric storage resource's MW withdrawals during an interval when the resource is self-scheduled at a fixed MW quantity (i.e., Self-Committed Fixed).

⁷⁸ *Id.*

⁷⁹ Order No. 841, 162 FERC ¶ 61,127 at P 297.

⁸⁰ Order No. 841-A, 167 FERC ¶ 61,154 at P 120.

⁸¹ Proposed OATT, §§ 2.7.2.1.5, 2.7.2.4.4.

C. Motion for Commission Action

31. Given we are acting on this matter today, we dismiss as moot NYISO's Motion requesting Commission action by August 4, 2020.

The Commission orders:

(A) In response to NYISO's request for rehearing, the First Compliance Order is hereby modified and the result sustained, as discussed in the body of this order.

(B) NYISO's Second Compliance Filing is hereby accepted, to become effective no later than September 30, 2020, subject to a further compliance filing within 90 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
Tariff Records Filed
New York Independent System Operator, Inc.
FERC FPA Electric Tariff
NYISO Tariffs

Docket No. ER19-467-004

[NYISO OATT, 2.7 OATT Billing and Payment, 10.0.0](#)

[NYISO MST, 4.2 MST Day-Ahead Markets and Schedules, 20.0.0](#)

[NYISO MST, 5.12 MST Requirements Applicable to Installed Capacity Suppl, 26.0.0](#)

[NYISO MST, 7.2 MST Billing and Payment Procedures, 5.0.0](#)

[NYISO MST, 13 MST Metering, 4.0.0](#)