

179 FERC ¶ 61,164  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

June 2, 2022

In Reply Refer To:  
New York Independent  
System Operator, Inc.  
Docket No. ER20-1718-003

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

Attention: David Allen, Esq.

Dear Mr. Allen:

1. On March 21, 2022, pursuant to Rules 212 and 2008(a) of the Commission's Rules of Practice and Procedure,<sup>1</sup> New York Independent System Operator, Inc. (NYISO) submitted a compliance filing to comply with the directives contained in the Commission's February 2022 Order<sup>2</sup> and a request for an extension of time to submit revisions to its Market Administration and Control Area Services Tariff (Services Tariff) as part of that compliance. As discussed below, we find that NYISO's compliance filing partially complies with the February 2022 Order, and we direct a further compliance filing to be submitted no later than August 1, 2022.

2. On April 30, 2020, as amended on July 9, 2020, NYISO proposed to change the Part A mitigation exemption test (Part A test)<sup>3</sup> under its buyer-side market power mitigation rules in four ways (Part A Enhancements).<sup>4</sup> First, NYISO proposed to modify

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.2008(a) (2021).

<sup>2</sup> *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022) (February 2022 Order).

<sup>3</sup> NYISO, NYISO Tariff, NYISO MST, attach. H (ISO Market Power Mitigation Measures), § 23.4.5.7.2 (3.0.0). The Part A test and the Part B mitigation exemption test (Part B test) assess market capacity conditions or unit-specific costs, respectively.

<sup>4</sup> February 2022 Order, 178 FERC ¶ 61,101 at 4-5.

its current practice of conducting the Part B test prior to the Part A test by proposing to conduct the test for the renewable resources exemption first, then the Part A test, and finally the Part B test. Second, NYISO proposed to establish two separate Part A mitigation study periods, which correspond to two consecutive three-year periods used in the Part A test. Third, NYISO proposed to evaluate resources under the Part A test for each capability year of the corresponding three-year Part A mitigation study period in which each project is grouped. Lastly, NYISO proposed to modify how new resources are ordered for evaluation under the Part A test.

3. On September 4, 2020, the Commission rejected NYISO's filing on Part A Enhancements.<sup>5</sup> Subsequently, in the February 2022 Order, the Commission modified the discussion in and set aside, in relevant part, the September 2020 Order to accept NYISO's proposed revisions on Part A Enhancements and directed NYISO to:

submit a compliance filing, within 30 days of the date of this order, proposing a new effective date that will enable NYISO to apply the new Part A provisions to the appropriate Class Year, as indicated by NYISO. However, NYISO's proposed effective date should be no later than the start of the next Class Year. NYISO should include in the compliance filing directed herein any tariff revisions necessary to make the Part A revisions effective for the Class Year so indicated.<sup>6</sup>

4. Regarding the February 2022 Order's directive to propose an effective date, NYISO proposes that the Part A Enhancements accepted by the Commission take effect for the Class Year immediately following the completion of the current Class Year 2021.<sup>7</sup> NYISO explains that this determination was made after consultation with Potomac Economics, Ltd., its independent Market Monitoring Unit. NYISO explains that significant progress in Class Year 2021 has already been made and that several process milestones pertaining to the Part A Enhancements having long since passed since they were first proposed. Therefore, according to NYISO, trying to implement the Part A Enhancements for Class Year 2021 could be disruptive.

5. Regarding the February 2022 Order's directive to include any Services Tariff revisions necessary to make the Part A revisions effective for the relevant Class Year, NYISO requests that the Commission grant an extension of time until August 1, 2022. NYISO states that, because the proposed Part A Services Tariff revisions were filed

<sup>5</sup> *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,206 (2020) (September 2020 Order).

<sup>6</sup> *Id.* P 36.

<sup>7</sup> NYISO Filing at 3.

nearly two years ago, NYISO must develop an updated Services Tariff filing, including the currently effective base tariff.<sup>8</sup> NYISO explains that it will not only need to make conforming changes to the Services Tariff to replace dates and milestone references (for the specific Class Year) related to implementing these revisions, but NYISO also expects that several additional updates will be required to align the Part A Enhancements with NYISO's currently effective Services Tariff provisions. Additionally, NYISO states that the Part A Enhancements will need to be aligned with the Services Tariff amendments associated with NYISO's proposal to amend the buyer-side market power mitigation rules in Docket No. ER22-772-000.

6. Notice of NYISO's filing in Docket No. ER20-1718-003 was published in the *Federal Register*, 87 Fed. Reg. 17,078 (Mar. 21, 2022), with interventions and protests due on or before April 11, 2022. None was filed.

7. We find that NYISO's compliance filing partially complies with the Commission's directives in the February 2022 Order. Although NYISO submitted a timely compliance filing and proposes to make the Part A Enhancements effective for the Class Year following Class Year 2021, it does not specify the effective date that will enable NYISO to apply the Part A Enhancements to the appropriate Class Year, nor does it include any tariff revisions necessary to make the Part A Enhancements effective for the Class Year so indicated. For these reasons, we require NYISO to submit a further compliance filing, to be submitted no later than August 1, 2022, that includes a specific effective date for the Part A Enhancements as well as any necessary tariff revisions to make the Part A revisions effective for the next Class Year. Finally, this directive renders it unnecessary for the Commission to address NYISO's request for an extension of time.

By direction of the Commission. Commissioner Danly is dissenting with a separate statement attached.

Debbie-Anne A. Reese,  
Deputy Secretary.

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<sup>8</sup> *Id.* at 3-4.

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FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER20-1718-003

(Issued June 2, 2022)

DANLY, Commissioner, *dissenting*:

1. I dissent from today's order<sup>1</sup> because it approves a compliance filing submitted by the New York Independent System Operator, Inc. (NYISO) regarding prior approved unduly discriminatory tariff revisions to Part A of the mitigation test for its buyer-side market power mitigation rules. I have previously explained<sup>2</sup> how the Commission exceeded its authority in approving tariff revisions prohibited by section 205(b) of the Federal Power Act.<sup>3</sup> I will not repeat that discussion here except to say that there is no material, legitimate basis to justify NYISO's discriminatory treatment prioritizing the evaluation of Public Policy Resources before non-Public Policy Resources, independent of any other consideration, including cost.
2. This is yet another unlawful order that should never have issued.

For these reasons, I respectfully dissent.

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James P. Danly  
Commissioner

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<sup>1</sup> *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,164 (2022).

<sup>2</sup> *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022) (Danly, Comm'r, dissenting).

<sup>3</sup> 16 U.S.C. § 824d(b).