

181 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

New York Independent System Operator, Inc.

Docket No. ER21-2460-002

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued October 24, 2022)

1. On July 19, 2021, as amended on November 19, 2021, New York Independent System Operator, Inc. (NYISO) submitted proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT)¹ in compliance with the requirements of Order No. 2222,² which “remove[s] barriers to the participation” of distributed energy resource aggregations in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations and Independent System Operators (RTO/ISO markets).³ On June 17, 2022, the Commission accepted NYISO’s compliance filing, subject to a further compliance filing to be submitted within 60 days of the date of issuance of the

¹ 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 *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg’l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh’g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh’g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

³ Order No. 2222, 172 FERC ¶ 61,247 at P 1.

June 17 Order, and directed NYISO to propose an effective date for its compliance filing in the fourth quarter of 2022.⁴

2. On July 18, 2022, NYISO timely submitted a request for clarification, or, in the alternative, request for rehearing of the June 17 Order. On July 18, 2022, Sustainable FERC Project, Natural Resources Defense Council, Advanced Energy Economy, and the City of New York (collectively, Clean Energy and Consumer Advocates or CECA) timely submitted a request for rehearing of the June 17 Order.

3. Pursuant to *Allegheny Defense Project v. FERC*,⁵ the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act (FPA),⁶ we are modifying the discussion in the June 17 Order and continue to reach the same result in this proceeding, as discussed below.⁷

I. Background

4. In Order No. 2222, the Commission adopted reforms to remove barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets.⁸ The Commission modified section 35.28 of its regulations,⁹ pursuant to its authority under

⁴ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,198 (2022) (June 17 Order). On July 27, 2022, the Commission granted NYISO's motion for a 90-day extension of time to and including November 14, 2022, to submit its required tariff modifications in response to the June 17 Order. *N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket Nos. ER21-2460-000 and ER21-2460-001 (July 27, 2022).

⁵ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁶ 16 U.S.C. § 825l(a) ("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.").

⁷ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the June 17 Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁸ Order No. 2222, 172 FERC ¶ 61,247 at P 1.

⁹ 18 C.F.R. § 35.28 (2021).

FPA section 206,¹⁰ to require each RTO/ISO to revise its tariff to ensure that its market rules facilitate the participation of distributed energy resource aggregations. In Order No. 2222, the Commission found that, by removing barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets, Order No. 2222 will enhance competition and, in turn, help ensure that the RTO/ISO markets produce just and reasonable rates.¹¹

5. On July 19, 2021, as amended on November 19, 2021, in compliance with the requirements of Order No. 2222, NYISO submitted proposed revisions to its Services Tariff and OATT. In the June 17 Order, the Commission accepted NYISO's compliance filing, subject to a further compliance filing.

II. Discussion

A. Procedural Matters

6. On August 5, 2022, Natural Resources Defense Council, Sustainable FERC Project, and Advanced Energy Economy (collectively, Clean Energy Advocates or CEA) submitted an answer to NYISO's request for clarification or, in the alternative, request for rehearing. On August 10, 2022, NYISO submitted a motion to reject CEA's answer and an alternative request for leave to answer and answer to CEA's answer.

7. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to a request for rehearing.¹² Because we consider NYISO's filing a request for rehearing—rather than a request for clarification and, in the alternative, request for rehearing¹³—we reject the answers.

¹⁰ 16 U.S.C. § 824e.

¹¹ Order No. 2222, 172 FERC ¶ 61,247 at P 3.

¹² 18 C.F.R. § 385.713(d)(1) (2021).

¹³ See, e.g., *Stowers Oil & Gas Co.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984) (“Nor does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it.”).

B. Substantive Matters**1. Eligibility of Heterogeneous Aggregations to Provide Ancillary Services****a. June 17 Order**

8. In its Order No. 2222 compliance filing, NYISO proposed that Aggregations may be eligible to qualify to provide certain ancillary services (i.e., regulation and operating reserves) only if all of the individual Distributed Energy Resources (DERs) in the Aggregation satisfy the relevant requirements to provide that ancillary service.¹⁴ In the June 17 Order, the Commission stated that any DERs that an Aggregator uses to satisfy NYISO's relevant technical, operational, and/or performance requirements should be allowed to provide ancillary services through aggregation.¹⁵ Thus, the Commission found that, so long as some of the DERs in the Aggregation can satisfy the relevant requirements to provide certain ancillary services, then those DERs should be able to provide those ancillary services through aggregation, in accordance with the goal of Order No. 2222 to allow distributed energy resources to provide all services that they are technically capable of providing through aggregation.¹⁶

9. At the same time, the Commission agreed with NYISO that this change should not be made at the expense of ensuring compliance with reliability standards and should not delay the timely implementation of NYISO's Aggregation model.¹⁷ Thus, the Commission clarified that NYISO should implement its Aggregation model in the fourth quarter of 2022, as proposed, but also make a further compliance filing proposing an effective date by which it will allow DERs in heterogeneous Aggregations to provide all of the ancillary services that they are technically capable of providing through aggregation while also addressing reliability concerns.¹⁸

¹⁴ June 17 Order, 179 FERC ¶ 61,198 at PP 70-71, 80, 85 (citing NYISO Order No. 2222 Compliance Filing, Transmittal Letter at 17-19 (filed July 19, 2021)).

¹⁵ *Id.* P 92.

¹⁶ *Id.* P 93 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 130).

¹⁷ *Id.*

¹⁸ The Commission noted that, to the extent that NYISO may need additional information from Aggregators regarding the individual DERs in an Aggregation in order to address NYISO's concerns, it should include such requirements among the information and data that an Aggregator must provide about the physical and operational characteristics of its Aggregation, including any necessary physical parameters to be submitted in registration, any necessary information that must be submitted for the

b. NYISO Rehearing Request

10. NYISO requests clarification or, in the alternative, rehearing of the Commission's discussion in the June 17 Order concerning ancillary services provided by a heterogeneous Aggregation.¹⁹ NYISO requests clarification of parts of paragraphs 92 and 93 of the June 17 Order, which NYISO quotes, in relevant part:

We understand protesters are concerned that NYISO's proposal unreasonably limits the ancillary services (i.e., regulation service and operating reserves) that a heterogeneous Aggregation can provide in scenarios where one or more DERs within that Aggregation is not capable of providing that service. . . .

We believe, however, that NYISO could address its reliability concerns by means other than requiring that all individual DERs within the Aggregation satisfy the relevant reliability requirements, such as the one-hour sustainability requirement. Therefore, *so long as some of the DERs in the Aggregation can satisfy the relevant requirements to provide certain ancillary services (e.g., the one-hour sustainability requirement), we find that those DERs should be able to provide those ancillary services through aggregation*, in accordance with the goal of Order No. 2222 to allow distributed energy resources to provide all services that they are technically capable of providing through aggregation. [footnote omitted] . . . Accordingly, we direct NYISO to file, within 60 days of the date of issuance of this order, a further compliance filing proposing an effective date *by which it will allow DERs in heterogeneous Aggregations to provide all of the ancillary services that they are technically capable of providing through aggregation*.²⁰

11. NYISO states that it has already commenced an effort to develop market improvements that will enhance the ability of heterogeneous Aggregations to provide the operating reserves that they are capable of providing in NYISO's markets,²¹ and it

individual DERs, or any additional bidding parameters. *Id.*

¹⁹ NYISO Rehearing Request at 1.

²⁰ *Id.* at 1-2 (including NYISO's added emphasis).

²¹ NYISO states that as part of its effort to develop Hybrid Storage Resources, it is

requests that the Commission clarify that the improvements and solutions described in its rehearing request would satisfy the Commission's directive in the June 17 Order.²² NYISO explains that, under its effort to develop market improvements and solutions, if at least one of the individual DERs in a heterogeneous Aggregation can provide an operating reserve product, then the heterogeneous Aggregation can choose to make available that single operating reserve product.²³ NYISO states that this approach provides heterogeneous Aggregations with the same treatment for operating reserves as other NYISO market participants. In particular, NYISO explains that the limitations on providing operating reserves are not unique to DER Aggregations; rather, they are inherent in NYISO's market software and would apply equally to any other NYISO market participant that sought to simultaneously make available two different operating reserve products, each with distinct quantity limits, in NYISO's markets today. Specifically, NYISO notes that all resources are only able to offer a single operating reserve product and that even after its proposed enhancements are implemented this will not change as to any resources.²⁴ NYISO states that, if the Commission grants the requested clarification that the market improvements are sufficient to address the operating reserve requirements in paragraphs 92 and 93 of the June 17 Order, then NYISO will include the improvements in its ongoing efforts to implement DERs in its markets.²⁵

12. NYISO states that, if the Commission intended a more expansive compliance requirement in the June 17 Order (i.e., to require NYISO to allow a heterogeneous Aggregation to simultaneously make available multiple operating reserve products, each with distinct quantity limits) then NYISO requests rehearing of that requirement.²⁶ NYISO states that such a requirement: (1) is inconsistent with NYISO's accepted DER market design, which does not require NYISO to consider the operational status of individual DERs; (2) present a reliability concern and could compromise reliability by requiring NYISO's real-time commitment and real-time dispatch, which develop developing market enhancements that is also intends to apply to DER Aggregations. *Id.* at 2 n.4.

²² *Id.* at 2.

²³ *Id.* at 8-11. NYISO notes that its operating reserve market co-optimization also permits higher quality operating reserve products to be used to address NYISO's need for lower quality operating reserve products when that is the most efficient option available. *Id.* at 11.

²⁴ *Id.* at 11.

²⁵ *Id.* at 11-12.

²⁶ *Id.* at 2, 12.

real-time market solutions and issue commitment and dispatch instructions, to solve a host of new constraints; (3) could delay the timely posting of real-time dispatch instructions; (4) would require NYISO to dedicate significant additional resources and time to develop and implement this new functionality through additional software and process improvements when it is not clear that the investment would provide equivalent benefits to reliability and market efficiency; and (5) would impose additional metering and telemetry costs on individual DERs and Aggregators.²⁷ NYISO also asserts that a more expansive requirement would deny NYISO the flexibility afforded to each RTO/ISO in Order No. 2222 to use a combination of heterogeneous and homogeneous participation models to achieve the goal of enabling DERs to provide all of the operating reserves that they are technically capable of providing through aggregation.²⁸ Finally, NYISO states that the more expansive requirement, which would require NYISO to obtain operating and performance information about individual DERs and use that information to manage their market participation, would shift the responsibility to manage individual DERs from the Aggregator to NYISO, contrary to the requirements of Order No. 2222.²⁹ In addition, NYISO expresses concern “that the Commission has failed to adequately consider the costs the NYISO, DER and Aggregators will incur to permit NYISO to more closely manage the participation of individual DER in heterogeneous DER Aggregations. The Commission has not weigh[ed] expected implementation costs against the additional Operating Reserves the New York Control Area will gain, or the additional revenues that DER will receive.”³⁰

c. Commission Determination

13. In response to NYISO’s request for rehearing³¹ of the Commission’s discussion in paragraphs 92 and 93 of the June 17 Order, we sustain the result of the June 17 Order. Below, we further explain the Commission’s finding in paragraph 93 that “those DERs [that can satisfy the relevant requirements to provide certain ancillary services] should be able to provide those ancillary services through aggregation[,]” and the Commission’s directive in paragraph 93 that NYISO “allow DERs in heterogeneous Aggregations to provide all of the ancillary services that they are technically capable of providing through aggregation[.]”³²

²⁷ *Id.* at 2-4, 13-16.

²⁸ *Id.* at 17-19 & n.28 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 130).

²⁹ *Id.* at 20-22 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 143).

³⁰ *Id.* at 22.

³¹ As previously noted, we consider NYISO’s filing a request for rehearing rather than a request for clarification and, in the alternative, request for rehearing. *See supra* P 7.

14. “Technically capable” of providing a service means meeting all of the technical, operational, and/or performance requirements that are necessary to reliably provide that service.³³ NYISO states that its software awards operating reserves based on four pieces of information about the resource’s energy offer, online/offline state, upper operating limit, and response (ramp) rate.³⁴ That is, resources do not make explicit offers for different operating reserve products, but rather NYISO awards operating reserves based on these four pieces of information about the resource. Using that system, NYISO states that it allows resources participating in NYISO’s markets to make available only a single operating reserve product to the NYISO market; NYISO states that no resources are eligible to simultaneously make available two different operating reserve products.³⁵ Based on NYISO’s representation that it allows resources participating in NYISO’s markets to make available only a single operating reserve product to the NYISO market, and because we consider this to be the kind of “technical, operational, and/or performance requirement” contemplated by Order No. 2222, we further explain that the Commission’s directive in paragraph 93 of the June 17 Order does not require NYISO to allow a heterogeneous Aggregation to simultaneously make available multiple operating reserve products.³⁶

³² June 17 Order, 179 FERC ¶ 61,198 at P 93.

³³ Order No. 2222, 172 FERC ¶ 61,247 at P 3 n.9.

³⁴ NYISO Rehearing Request at 6-7 (citing NYISO Market Administration and Control Area Services Tariff Section 15.4.3.1).

³⁵ See, e.g., *id.* at 13 (“Resources that participate in the NYISO’s markets today are only capable of making available a single Operating Reserve product There are no resources that are eligible to simultaneously make available two different Operating Reserve products, each with distinct quantity limits, in the NYISO’s markets today, so there is no software capability that NYISO could readily use or modify to enable heterogeneous DER Aggregations to simultaneously make available multiple Operating Reserve products, each with distinct quantity limits.”); *id.* at 11 (“[T]he limitations on providing Operating Reserves that the NYISO describes are not unique to DER Aggregations, they are inherent in the NYISO’s market software and would apply equally to any other Resource that sought to simultaneously make available two different Operating Reserve products, each with distinct quantity limits, in the NYISO’s markets today.”).

³⁶ See also Order No. 2222, 172 FERC ¶ 61,247 at P 117 (stating that “distributed energy resource aggregations must be able to meet the qualification and performance requirements to provide the service that they are offering into RTO/ISO markets”); June 17 Order, 179 FERC ¶ 61,198 at P 112.

15. Turning to NYISO's request that the Commission find that the developing market improvements and solutions described in its rehearing request would satisfy paragraphs 92 and 93 of the June 17 Order,³⁷ we note that a rehearing request is not the proper forum to determine whether NYISO's ongoing market improvements and solutions effort complies with the requirements of the June 17 Order. Further, NYISO's proposed tariff language for its compliance proposal has neither been filed with the Commission nor noticed for public comment.³⁸ Therefore, while we sustain the result of the June 17 Order, including the findings in paragraphs 92 and 93 as we have further explained them here, we will not prejudge the merits of NYISO's compliance filing in response to the June 17 Order.

2. Definition of DER and Energy Efficiency Resources

a. June 17 Order

16. In its Order No. 2222 compliance filing, NYISO proposed to define a DER as “(i) a facility comprising two or more Resource types behind a single point of interconnection with an Injection Limit of 20 MW or less; or (ii) a Demand Side Resource; or (iii) a Generator with an Injection Limit of 20 MW or less, that is electrically located in the [New York Control Area (NYCA)].”³⁹ NYISO argued that its definition of DER will permit any DER located on the distribution system, a subsystem thereof, or the New York State transmission system to participate in an Aggregation. NYISO asserted that its definition permits electric storage resources, thermal storage, intermittent generation, distributed generation, thermal generation, and Demand Side Resources to qualify as DER. In addition, NYISO explained that a DER may also be a single facility that combines multiple resource types behind the same point of interconnection (e.g., a facility that combines demand reduction capability with an electric storage resource behind the same point of interconnection).

17. The Commission found that NYISO's proposal includes a technology-neutral definition for DER, and thus, does not prohibit any type of technology from participating

³⁷ In its rehearing request, NYISO explains that it is developing market improvements where if at least one of the individual DERs in a heterogeneous Aggregation can provide an operating reserve product, then the heterogeneous Aggregation can choose to make available that single operating reserve product. NYISO Rehearing Request at 8-11. NYISO states that this approach provides heterogeneous Aggregations with the same opportunity to provide operating reserves as other resources participating in NYISO's markets. *Id.* at 11.

³⁸ See *supra* note 4.

³⁹ June 17 Order, 179 FERC ¶ 61,198 at P 61 & n.110 (citing NYISO Order No. 2222 Compliance Filing, Transmittal Letter at 14).

in an Aggregation.⁴⁰ The Commission found that NYISO's definition of DER encompasses every resource that is technically capable of providing wholesale services through aggregation.⁴¹ The Commission explained, however, that energy efficiency resources are not technically capable of providing wholesale services in NYISO's markets.⁴² The Commission was not persuaded by protesters' arguments that Order No. 2222 requires NYISO to change its existing performance requirements to accommodate a specific type of resource, in this case energy efficiency, to participate in NYISO's capacity market as part of an Aggregation.⁴³ The Commission stated that Order No. 2222 does not require NYISO to change its existing market qualification and performance requirements; rather, "distributed energy resource aggregations must be able to meet the qualification and performance requirements to provide the service that they are offering into RTO/ISO markets."⁴⁴ Accordingly, the Commission agreed with NYISO that it should not be required to change its capacity market qualification requirements to enable energy efficiency resources (or any other resource type that currently does not qualify) to participate in NYISO's capacity market. The Commission further found that NYISO's existing capacity market requirement that all Demand Side Resources be able to perform in a manner consistent with the directions and control of NYISO is itself technology neutral, and that, irrespective of whether energy efficiency resources are capable of providing resource adequacy in other RTO/ISO markets, these resources are not capable of meeting all of the current operational requirements to provide resource adequacy in NYISO.

b. CECA Rehearing Request

18. CECA seeks rehearing of the Commission's determination that NYISO's definition of DER complies with Order No. 2222 because it is technology-neutral and encompasses every resource that is technically capable of providing wholesale services through aggregation.⁴⁵ CECA argues that NYISO's definition of DER is not technology-neutral, however, because it prevents energy efficiency and other passive demand resources from participating in NYISO's capacity market even though these resources are

⁴⁰ *Id.* PP 64, 110.

⁴¹ *Id.* P 64.

⁴² *Id.* P 64 n.116; *see id.* at P 112 n.238 ("all Demand Side Resources must be able to reduce load at the direction of NYISO in order to participate in NYISO's markets.").

⁴³ *Id.* P 112.

⁴⁴ *Id.* (quoting Order No. 2222, 172 FERC ¶ 61,247 at 117).

⁴⁵ CECA Rehearing Request at 1-2 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 64).

technically capable of providing capacity in the market through aggregation.⁴⁶ CECA asserts that the participation of energy efficiency resources in other RTO/ISO capacity markets further demonstrates that energy efficiency resources are technically capable of providing capacity in NYISO's capacity market.⁴⁷ CECA argues that the Commission's determination is contrary to Order No. 2222 because it does not reduce barriers to, or accommodate the characteristics of, DERs such as energy efficiency resources.⁴⁸

c. Commission Determination

19. We are unpersuaded by CECA's arguments. The June 17 Order fully addressed whether NYISO's definition of DER is technology-neutral and whether NYISO prohibits any particular type of technology from participating in an Aggregation. Accordingly, we sustain the result of the June 17 Order and continue to find that NYISO's proposal includes a technology-neutral definition for DER and therefore does not prohibit any type of technology from participating in an Aggregation. As noted, the June 17 Order found that NYISO's definition of DER encompasses every resource that is technically capable of providing wholesale services through aggregation.⁴⁹ Further, as we noted in the June 17 Order, NYISO's existing capacity market requirement that all Demand Side Resources be able to perform in a manner consistent with the directions and control of NYISO is technology neutral, and energy efficiency resources are not capable of meeting all of the current operational requirements to provide resource adequacy in NYISO.⁵⁰

The Commission orders:

In response to the requests for rehearing, the June 17 Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.
Commissioner Clements is dissenting in part with a separate statement attached.
Commissioner Christie is concurring with a separate statement attached.

(S E A L)

⁴⁶ *Id.* at 2, 13-14.

⁴⁷ *Id.* at 2, 17-18.

⁴⁸ *Id.* at 3, 14-17.

⁴⁹ June 17 Order, 179 FERC ¶ 61,198 at P 64.

⁵⁰ *Id.* P 112.

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER21-2460-002

(Issued October 24, 2022)

DANLY, Commissioner, *concurring*:

1. I concur in today's latest order¹ on the New York Independent System Operator, Inc.'s (NYISO) attempts to clarify and comply with Order No. 2222.² I concur because the Commission does not require NYISO to make fundamental changes to its existing market design or software to “allow [Distributed Energy Resources] in heterogeneous Aggregations to provide all of the ancillary services that they are technically capable of providing through aggregation.”³ I agree that broad market design revisions—such as changing how all operating reserve products are offered and selected—are unnecessary and inappropriate as an Order No. 2222 compliance exercise.

2. Today's order unfortunately is not so unambiguous, but it does confirm that the Commission is not “requir[ing] NYISO to allow a heterogeneous Aggregation to simultaneously make available multiple operating reserve products.”⁴ To so require in NYISO apparently would impose the sort of extensive market design and software changes that Order No. 2222 does not mandate or even contemplate.

3. NYISO still has a compliance filing to make, however.⁵ My hope is that the Commission does not change course and force NYISO to rework its markets in the name of allowing a “heterogeneous Aggregation” of Distributed Energy Resources to participate, or to grant “heterogeneous Aggregations” special treatment that is unavailable to all other providers of operating reserves.

¹ *N.Y. Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,054 (2022).

² *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020) (Order No. 2222), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021) (Order No. 2222-A).

³ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,198, at P 93 (2022).

⁴ *N.Y. Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,054 at P 14.

⁵ *See id.* P 15.

4. This is exactly why I dissented from Order No. 2222 in the first place.⁶ The Commission should not be in the business of imposing unnecessary, micro-managing mandates to any utility, including the Regional Transmission Organizations (RTOs), ever. We should be particularly reluctant to do so when the mandate's effects will be concentrated on the distribution system, since the distribution system is primarily under state jurisdiction. Today's order is also an example of why I concurred with the order on NYISO's first attempted compliance to highlight the difficulty RTOs face when attempting to comply with Order No. 2222.⁷ A majority of the Commission is so anxious to facilitate the participation of Distributed Energy Resources that it throws to the wind old, out-of-fashion considerations like jurisdiction,⁸ low cost,⁹ and reliability.¹⁰ But the result still must be just and reasonable rates that ensure reliability, and I strongly doubt any Order No. 2222 "compliance" that requires NYISO or any RTO to revamp fundamental market design elements to accommodate "heterogeneous Aggregations" would be able to pass muster under the FPA.

For these reasons, I respectfully concur.

⁶ Order No. 2222, 172 FERC ¶ 61,247 (Danly, Comm'r, dissenting); *see also* Order No. 2222-A, 174 FERC ¶ 61,197 (Danly, Comm'r, dissenting).

⁷ June 2022 Order, 179 FERC ¶ 61,198 (Danly, Comm'r, concurring).

⁸ *See, e.g.*, Order No. 2222, 172 FERC ¶ 61,247 (Danly, Comm'r, dissenting at P 3) ("Respect for the States' role in our federal system and under the [Federal Power Act (FPA)] would counsel against even modest, non-essential declarations of our authority, if done at the States' expense.").

⁹ *See, e.g.*, NYISO July 18, 2022 Request for Clarification Or, in the Alternative, Rehearing, at 2-3 ("Making the additional software and process improvements necessary to implement an expansive reading of the [Commission's] requirements . . . would require the NYISO to dedicate significant additional resources and time to develop and implement new functionality" and cautioning that "it is not clear if the investment in this added functionality would provide equivalent benefits to reliability or market efficiency.").

¹⁰ *See, e.g., id.* at 2 ("Making the additional software and process improvements necessary to implement an expansive reading of the [Commission's] requirements" "*could compromise reliability* by requiring the NYISO's Real-Time Commitment . . . and Real-Time Dispatch . . . which develop Real-Time Market solutions and issue commitment and dispatch instructions, to solve a host of new constraints in order to incorporate the operation of individual [Distributed Energy Resources] that participate in its markets as components of a larger Aggregation.") (emphasis added).

James P. Danly
Commissioner

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CLEMENTS, Commissioner, *dissenting in part*:

1. I dissent in part on today's order because it affirms the majority's prior finding that the New York Independent System Operator, Inc. (NYISO) may exclude energy efficiency from participating in distributed energy resource (DER) aggregations without running afoul of the requirements of Order No. 2222. I disagree with that decision and therefore would have granted the request for rehearing on this issue submitted by Clean Energy and Consumer Advocates¹ and found that NYISO's definition of DER does not comply with Order No. 2222.

2. As I explained in my statement on the Commission's June 2022 order addressing NYISO's compliance filing,² excluding energy efficiency is at odds with the express purpose of Order No. 2222 to "remove the barriers that qualification and performance requirements currently pose to the participation of [DERs] in the RTO/ISO markets."³ It is also contrary to the Commission's plain requirement in Order No. 2222 that "RTOs/ISOs may not prohibit any particular type of [DER] technology from participating in [DER] aggregations."⁴

3. On rehearing, the majority again accepts NYISO's assertion that its compliance proposal, including its DER definition, "does not prohibit any type of technology from participating in an Aggregation" because energy efficiency resources are not capable of meeting all of the current operational requirements to provide resource adequacy in NYISO.⁵ However, as noted above, the very purpose of Order No. 2222 was to remove

¹ Clean Energy and Consumer Advocates July 18 Rehearing Request.

² *New York Independent System Operator, Inc.*, 179 FERC ¶ 61,198 (2022) (Clements, Comm'r, concurring in part and dissenting in part).

³ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247, at P 26 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197 (2021), *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

⁴ Order No. 2222, 172 FERC ¶ 61,247 at P 114 n.277.

this type of barrier to DER participation. NYISO is the sole RTO/ISO with a capacity market that precludes the participation of energy efficiency in its capacity market,⁶ a fact that belies the claim that energy efficiency is not technically capable of providing resource adequacy. By permitting NYISO to exclude energy efficiency from its DER rules, I believe the majority alters the requirements of Order No. 2222 that laudably sought to “ensur[e] that any resource that it is technically capable of providing wholesale services through aggregation is eligible to do so[.]”⁷

For these reasons, I respectfully dissent in part.

Allison Clements
Commissioner

⁵ *New York Independent System Operator, Inc.*, 181 FERC ¶ 61,054, at P 18 (2022).

⁶ *New York Independent System Operator, Inc.*, 179 FERC ¶ 61,198 (Clements, Comm’r, concurring in part and dissenting in part, at P 2 n.6).

⁷ Order No. 2222, 172 FERC ¶ 61,247 at P 114.

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CHRISTIE, Commissioner, *concurring*:

1. While I concur in the approval of the order, I note that the order and the record in this matter are exceedingly complex, sometimes indecipherable and possibly unworkable, thus illustrating the inherent flaws in Order No. 2222 and its progeny, described in my dissent to Order No. 2222-A¹ and my concurrences to extensions of the deadline to submit filings to comply with the requirements of Order No. 2222 for MISO, SPP and PJM² and for ISO-NE.³

2. Specifically, in my Concurrence to the Extension Order, I stated:

The motions filed by each of MISO, SPP and PJM *illustrate the daunting complexities, potential negative impacts on reliability, and certain increased costs to consumers, all of which I referenced in my dissent to Order No. 2222-A and which apply equally to its forebear, Order No. 2222. The problems and complexities of compliance described in these motions is further evidence that implementing*

¹ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222-A, 174 FERC ¶ 61,197 (2021) (Christie, Comm'r, dissenting, available at <https://www.ferc.gov/news-events/news/item-e-1-commissioner-mark-c-christie-dissent-regarding-participation-distributed>).

² *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 175 FERC ¶ 61,013 (2021) (Christie, Comm'r, concurring, available at <https://www.ferc.gov/news-events/news/commissioner-mark-c-christie-concurrence-regarding-order-granting-compliance>) (Concurrence to the Extension Order).

³ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 175 FERC ¶ 61,156 (2021) (Christie, Comm'r, concurring, available at <https://www.ferc.gov/news-events/news/commissioner-mark-c-christie-concurrence-regarding-order-granting-compliance-0>).

Order Nos. 2222 and 2222-A will be far more complicated, far more costly to consumers and far more burdensome to states, public and municipal power authorities, and electric co-operatives, than these orders and many of their supporters acknowledge. . . .

As I said in my remarks at the March 18, 2021 Commission Open Meeting at which Order No. 2222-A was approved and in my written dissent to that order, *the costs of compliance with both Order Nos. 2222 and 2222-A will be far more substantial than have been recognized and, ultimately, consumers will pay them.*⁴

3. This order graphically illustrates my earlier warning:

These motions offer a preview of what's coming in terms of the complications and impacts on reliability caused by these orders and the substantial costs that will have to be expended not only to address those threats but to address the complexity of the requirements these orders impose, costs that will be piled on consumers.⁵

4. NYISO was quite clear that the Commission's statements in its June 2022 Order⁶ (i) raised significant reliability concerns,⁷ (ii) are impracticable, overly prescriptive, fundamentally inconsistent with NYISO's market design, and practically impossible to implement in the near future,⁸ and (iii) reflected that the Commission had likely not

⁴ Concurrence to the Extension Order at PP 3, 7 (emphasis in original and added) (footnotes omitted).

⁵ *Id.* P 7.

⁶ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,198 (2022).

⁷ *See, e.g.*, NYISO July 18, 2022 Request for Clarification or, in the Alternative, Rehearing at 15 ("The Commission's directive *presents* a reliability concern.") (emphasis added); *id.* at 16 ("It is arbitrary and capricious for the Commission to insist that [] the NYISO implement rules that are technically impracticable, *particularly when attempting to implement the requirements that the Commission has instructed could threaten reliability.*") (emphasis added).

⁸ *See, e.g., id.* at 12 ("If Paragraph 93 is not clarified as requested above then its directive is *overly prescriptive, fundamentally inconsistent with the NYISO's market design, practically impossible to implement in the near future, and could threaten reliability.* It does not reflect reasoned decision-making and is not based on substantial evidence. Paragraph 93 failed to offer a reasoned explanation for disregarding record

considered the cost-benefit of the ramifications of that language on NYISO, Distributed Energy Resources (DER) and Aggregators.⁹ Such costs would, as I have before noted, certainly be passed on to consumers. So, while I agree that NYISO should not be required to allow a heterogeneous Aggregation to simultaneously make available multiple operating reserve products, given the overwhelming complexities of these issues and how they relate to costly software solutions and other market workings, the order may not adequately address other concerns NYISO expressed but which were masked by these complexities.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

evidence demonstrating the *impracticability* of requiring the NYISO to permit DER Aggregations to simultaneously make available multiple Operating Reserve products, each with distinct quantity limits, even though evidence of other practical limitations that constrained the NYISO's implementation of DER was accepted elsewhere in the June 17 Order. In addition, P[aragraph] 93's requirement that the NYISO obtain operating and performance information about individual DER and use that information to manage their market participation contradicts Order No. 2222. In short, if Paragraph 93 is not clarified, its directive is arbitrary and capricious under the Administrative Procedure Act [] and must be modified on rehearing.") (emphasis added).

⁹ See, e.g., *id.* at 22 ("The NYISO is concerned that the Commission has failed to adequately consider the costs the NYISO, DER and Aggregators will incur to permit NYISO to more closely manage the participation of individual DER in heterogeneous DER Aggregations. The Commission has not weigh[ed] expected implementation costs against the additional Operating Reserves the New York Control Area will gain, or the additional revenues that DER will receive"); *id.* at 2 ("While it is clear that the added complexity, resources and time necessary to develop and implement such additional functionality would be significant, it is not clear if the investment in this added functionality would provide equivalent benefits to reliability or market efficiency.").