

183 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER21-2460-003

ORDER ON COMPLIANCE FILING

(Issued April 20, 2023)

1. On June 17, 2022, the Commission issued an order accepting, subject to a further compliance filing,¹ a filing that New York Independent System Operator, Inc. (NYISO) made to comply with the requirements of Order No. 2222, which removes 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).²

2. On November 14, 2022, NYISO submitted further proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT)³ to comply with the First Compliance Order. In this order, we accept NYISO's filing, subject to further compliance filings, as discussed below.

I. Background

3. In Order No. 2222, the Commission adopted reforms to remove barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets.⁴ The

¹ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,198 (First Compliance Order), *order on reh'g*, 181 FERC ¶ 61,054 (2022) (Rehearing Order).

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 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.

Commission modified section 35.28 of its regulations⁵ pursuant to its authority under Federal Power Act (FPA) section 206⁶ to require each RTO/ISO to revise its tariff to ensure that its market rules facilitate the participation of distributed energy resource aggregations. 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.

4. In Order No. 2222, the Commission amended its regulations to require each RTO/ISO to include tariff provisions addressing distributed energy resource aggregations that: (1) allow distributed energy resource aggregations to participate directly in RTO/ISO markets and establish distributed energy resource aggregators as a type of market participant; (2) allow distributed energy resource aggregators to register distributed energy resource aggregations under one or more participation models that accommodate the physical and operational characteristics of the distributed energy resource aggregations; (3) establish a minimum size requirement for distributed energy resource aggregations that does not exceed 100 kilowatts (kW); (4) address locational requirements for distributed energy resource aggregations; (5) address distribution factors and bidding parameters for distributed energy resource aggregations; (6) address information and data requirements for distributed energy resource aggregations; (7) address metering and telemetry requirements for distributed energy resource aggregations; (8) address coordination between the RTO/ISO, the distributed energy resource aggregator, the distribution utility, and the relevant electric retail regulatory authorities (RERRA); (9) address modifications to the list of resources in a distributed energy resource aggregation; and (10) address market participation agreements for distributed energy resource aggregators.⁷ Additionally, under Order No. 2222, each RTO/ISO must accept bids from a distributed energy resource aggregator if its aggregation includes distributed energy resources that are customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year. An RTO/ISO must not accept bids from a distributed energy resource aggregator if its aggregation includes distributed energy resources that are customers of utilities that distributed 4 million megawatt-hours (MWh) or less in the previous fiscal year, unless the RERRA permits such customers to be bid into RTO/ISO markets by a distributed energy resource aggregator.

⁴ Order No. 2222, 172 FERC ¶ 61,247 at P 1.

⁵ 18 C.F.R. § 35.28 (2022).

⁶ 16 U.S.C. § 824e.

⁷ Order No. 2222, 172 FERC ¶ 61,247 at P 8.

5. On July 19, 2021, NYISO filed its initial proposal to comply with the requirements of Order No. 2222. In the First Compliance Order, the Commission found that NYISO's proposed Distributed Energy Resource (DER) and Aggregation participation model partially complied with the requirements of Order No. 2222.⁸ The Commission accepted NYISO's filing, subject to a further compliance filing to be filed within 60 days of the date of issuance of the order.⁹ The Commission directed NYISO to address certain market rules related to: (1) small utility opt-in requirements;¹⁰ (2) interconnection procedures;¹¹ (3) resource eligibility to participate in the NYISO markets through a DER Aggregator;¹² (4) double-counting requirements;¹³ (5) locational requirements;¹⁴ (6) information and data requirements;¹⁵ (7) metering and telemetry system requirements;¹⁶ (8) coordination between NYISO, Aggregators, and distribution utilities;¹⁷ (9) modifications to the list of DERs in an Aggregation;¹⁸ and (10) market participation agreements.¹⁹ 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 further compliance filing.²⁰

⁸ First Compliance Order, 179 FERC ¶ 61,198 at P 17.

⁹ *Id.* P 1.

¹⁰ *Id.* PP 34-39.

¹¹ *Id.* PP 54, 57.

¹² *Id.* PP 92-93.

¹³ *Id.* PP 135-136.

¹⁴ *Id.* PP 153-155.

¹⁵ *Id.* PP 170-172.

¹⁶ *Id.* PP 208-216.

¹⁷ *Id.* PP 263-275, 292-294, 305.

¹⁸ *Id.* PP 325-328.

¹⁹ *Id.* PP 336-337.

²⁰ *N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket Nos. ER21-2460-000 & ER21-2460-001 (Jul. 27, 2022).

II. Compliance Filing

6. On November 14, 2022, NYISO submitted proposed revisions to its Services Tariff and OATT to comply with the requirements of Order No. 2222, as directed in the First Compliance Order. NYISO states that the proposed tariff revisions are: (1) expressly required by the First Compliance Order, (2) necessary to implement or clarify the existing tariff language to accommodate those directives, or (3) non-substantive organizational or clarifying adjustments.²¹

III. Notice of Filing and Responsive Pleading

7. Notice of NYISO's filing was published in the *Federal Register*, 87 Fed. Reg. 71,605 (Nov. 23, 2022), with interventions and protests due on or before December 5, 2022.

8. Comments were filed by Advanced Energy Economy, Sustainable FERC Project, and Natural Resources Defense Council (collectively, Clean Energy Advocates).

IV. Discussion

9. As discussed below, we accept NYISO's filing, subject to further compliance filings.

10. As a preliminary matter, we find that NYISO complies with the directives in the First Compliance Order relating to the following requirements of Order No. 2222: (1) provide that RTOs/ISOs may not accept bids from a distributed energy resource aggregator if its aggregation includes distributed energy resources that are customers of utilities that distributed 4 million MWh or less in the previous fiscal year, unless the RERRA allows such customers to be bid into RTO/ISO markets by a distributed energy resource aggregator;²² (2) limit the participation of resources in RTO/ISO markets through a distributed energy resource aggregator that are receiving compensation for providing the same services as part of another program;²³ (3) establish locational requirements for distributed energy resources to participate in a distributed energy resource aggregation that are as geographically broad as technically feasible;²⁴

²¹ NYISO November 14, 2022 Compliance Filing, Transmittal at 2 (Transmittal).

²² First Compliance Order, 179 FERC ¶ 61,198 at PP 34-35, 38-39. *See* Transmittal at 4-6; Proposed NYISO Services Tariff, § 4.1 (22.0.0), § 4.1.10.

²³ First Compliance Order, 179 FERC ¶ 61,198 at PP 135-136. *See* Transmittal at 10; Proposed NYISO Services Tariff §§ 4.1.10.5, 4.1.10.6.

²⁴ First Compliance Order, 179 FERC ¶ 61,198 at PP 153, 155. *See* Transmittal

(4) establish market rules that address information requirements and data requirements for distributed energy resource aggregations;²⁵ (5) establish market rules that address metering and telemetry hardware and software requirements necessary for distributed energy resource aggregations to participate in RTO/ISO markets;²⁶ (6) establish market rules that address coordination between the RTO/ISO, the distributed energy resource aggregator, the distribution utility, and the RERRAs;²⁷ and (7) establish market rules that address modification to the list of resources in a distributed energy resource aggregation.²⁸ Furthermore, NYISO's compliance with these requirements is not contested in this proceeding. We address all remaining compliance requirements and Clean Energy Advocates' comments below.²⁹

A. Interconnection

11. In Order No. 2222, the Commission declined to exercise its jurisdiction over the interconnections of distributed energy resources to distribution facilities for the purpose of participating in RTO/ISO markets exclusively as part of a distributed energy resource aggregation.³⁰ The Commission therefore stated that it will not require standard

at 11-12; Proposed NYISO Services Tariff § 4.1.10.2.

²⁵ First Compliance Order, 179 FERC ¶ 61,198 at PP 170, 172. *See* Transmittal at 12-13; Proposed NYISO Services Tariff §§ 4.1.10.3, 4.1.10.7.1.1, 4.1.10.7.1.2, 4.1.10.7.1.4.

²⁶ First Compliance Order, 179 FERC ¶ 61,198 at PP 208, 212, 216. *See* Transmittal at 14-15; Proposed NYISO Services Tariff § 4.1.10.4.

²⁷ First Compliance Order, 179 FERC ¶ 61,198 at PP 263, 265-266, 268-270, 273, 275, 292, 294, 305. *See* Transmittal at 16-20; Proposed NYISO Services Tariff §§ 4.1.10.7.1, 4.1.10.7.1.2, 4.1.10.7.1.3, 4.1.10.7.2.1, 4.1.10.7.2.2, 4.1.10.7.2.3, 4.1.10.7.3.

²⁸ First Compliance Order, 179 FERC ¶ 61,198 at PP 325, 328. *See* Transmittal at 20-21; Proposed NYISO Services Tariff §§ 4.1.10.3, 4.1.10.7.1.1, § 4.1.10.7.1.3.

²⁹ In their comments, Clean Energy Advocates state that they are disappointed by the delay in NYISO's full implementation of Order No. 2222, and they encourage the Commission not to grant any further extension of NYISO's implementation of Order No. 2222 beyond 2026. We note that the effective date for NYISO's implementation of Order No. 2222 is not at issue in this order. Also, we will not prejudge any future request by NYISO to extend the overall effective date for NYISO's implementation of Order No. 2222. If NYISO makes such a request, we will act on it at that time based on the facts before us and the comments submitted in the record.

³⁰ Order No. 2222, 172 FERC ¶ 61,247 at P 90.

interconnection procedures and agreements or wholesale distribution tariffs for such interconnections. The Commission also stated that Order No. 2222 does not revise the Commission's jurisdictional approach to the interconnections of Qualifying Facilities (QF) that participate in distributed energy resource aggregations.³¹ In Order No. 2222-A, the Commission clarified that the Commission declined to exercise jurisdiction over the interconnections of distributed energy resources, including the interconnections of QFs, to distribution facilities for the purpose of participating in RTO/ISO markets exclusively as part of a distributed energy resource aggregation.³²

12. Recognizing that distributed energy resources may already have interconnected pursuant to procedures that were accepted by the Commission prior to the effective date of Order No. 2222, the Commission stated that it is not requiring distributed energy resources that already interconnected under Commission-jurisdictional procedures to convert to state or local interconnection agreements.³³ The Commission required each RTO/ISO to make any necessary tariff changes to reflect this guidance.³⁴

1. First Compliance Order

13. In the First Compliance Order, the Commission found that NYISO's proposal partially complied with Order No. 2222 with respect to interconnection procedures.³⁵ First, the Commission found that NYISO's proposed revisions to section 32.1.1 of its OATT, which exempted from the Small Generator Interconnection Procedures (SGIP) the interconnections of facilities participating in NYISO's markets exclusively through an

³¹ *Id.* P 98 (citing *Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 104 FERC ¶ 61,103, at PP 813-15 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *Standardization of Small Generator Interconnection Agreements & Procs.*, Order No. 2006, 111 FERC ¶ 61,220, at PP 516-18, *order on reh'g*, Order No. 2006-A, 113 FERC ¶ 61,195 (2005), *order granting clarification*, Order No. 2006-B, 116 FERC ¶ 61,046 (2006); *Reform of Generator Interconnection Procs. & Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *errata notice*, 167 FERC ¶ 61,123, *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *errata notice*, 167 FERC ¶ 61,124, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019)).

³² Order No. 2222-A, 174 FERC ¶ 61,197 at P 43.

³³ Order No. 2222, 172 FERC ¶ 61,247 at P 103.

³⁴ *Id.* P 104.

³⁵ First Compliance Order, 179 FERC ¶ 61,198 at P 53.

Aggregation, should only apply to interconnections of DERs on the distribution system.³⁶ Accordingly, the Commission directed NYISO to revise OATT Attachment Z sections 32.1.1 and 32.5, respectively, to: (1) specify that the interconnection to the distribution system of facilities participating in NYISO's markets exclusively through an Aggregation is not subject to the SGIP; and (2) revise the definition of Small Generating Facility to exempt facilities connecting to the distribution system that participate in NYISO's markets exclusively through an Aggregation from the SGIP.

14. Second, the Commission found that NYISO's proposal to apply its existing deliverability requirements for Capacity Resource Interconnection Service (CRIS) requests on a comparable basis to all resources, including to DER Aggregations, was appropriate because it would enable Aggregations to demonstrate that they are technically capable of providing capacity in NYISO, consistent with Order No. 2222.³⁷ However, the Commission agreed with Public Interest Organizations that NYISO's tariff may contain inconsistencies and ambiguities.³⁸ The Commission explained that, for example, section 25.1.1 of Attachment S—which incorporates the SGIP by reference, and to which distribution-level Aggregations are exempt—created an inconsistency that appears to exempt Aggregations from the requirements to obtain CRIS and/or Energy Resource Interconnection Service (ERIS). The Commission also explained that, because NYISO's proposal exempted Aggregations from the definition of Small Generating Facility, it was unclear how Aggregations obtain ERIS. Accordingly, the Commission directed NYISO to: (1) revise OATT Attachment S and any other affected tariff provisions to resolve the apparent inconsistencies and ambiguities in its tariff, or explain why such revisions are not necessary; and (2) identify and explain the relevant tariff provisions that codify the rules by which DERs that are not subject to the SGIP may obtain CRIS and ERIS.

2. Filing

15. On compliance, NYISO proposes to revise OATT section 32.1.1.1 to clarify that the SGIP does not apply to “interconnections to the Distribution System proposing to participate in the ISO markets solely through an Aggregation.”³⁹ NYISO also proposes to modify the definition of Small Generating Facility in OATT section 32.5:⁴⁰

³⁶ *Id.* P 54 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 90).

³⁷ *Id.* P 55.

³⁸ *Id.* P 57.

³⁹ Transmittal at 6-7; Proposed NYISO OATT, § 32 (Attach. Z), § 32.1 (Application) (15.0.0), § 32.1.1.1.

⁴⁰ Transmittal at 6-7; Proposed NYISO OATT, § 32 (Attach. Z), § 32.5

Small Generating Facility – The Interconnection

Customer's facility, no larger than 20 MW for the production and/or storage for later injection of electricity identified in the Interconnection Request if proposing to interconnect to the New York State Transmission System or Distribution System, but shall not include ... (iii) interconnections proposed solely for the purpose of net metering; ~~(iiiiv)~~ facilities proposing to interconnect to the New York State Transmission System or the Distribution System made solely for the purpose of net metering; ~~(iv)~~ facilities proposing to interconnect to LIPA's distribution facilities; ~~(vi)~~ facilities participating in the ISO markets exclusively proposing to interconnect to the Distribution System solely for the purpose of participating in the ISO markets through an Aggregation; and ~~(vii)~~ the Interconnection Customer's Interconnection Facilities....

16. NYISO also proposes to revise OATT sections 25.1.1 and 25.3.1 to clarify the existing rules under which a DER that interconnects to the distribution system that is not pursuant to the SGIP will need to obtain CRIS in the same manner as other resources.⁴¹

17. NYISO proposes to modify the definition of ERIS in OATT section 25.1.2 to clarify that, for facilities with proposed interconnections that are not subject to the SGIP, ERIS is the service provided by NYISO to a qualified generating facility to enable the New York State Transmission System to receive energy and ancillary services from the generating facility.⁴² NYISO also proposes revisions in OATT section 32.1.1.1 to define the amount of ERIS that a qualified DER that is not subject to the SGIP will obtain:

For a generating facility not subject to the SGIP that is qualified to participate in a NYISO market pursuant to applicable ISO Procedures, it will be deemed to have ERIS in the MW amount of the generating facility's net seasonal capacity (in aggregate where it includes multiple energy production devices), as memorialized in the applicable interconnection agreement with the respective Connecting Transmission Owner.⁴³

(Appendices) (22.0.0), § 32.5.

⁴¹ Transmittal at 7.

⁴² *Id.*

⁴³ *Id.*; proposed NYISO OATT § 32.1.1.1.

3. Commission Determination

18. We find that NYISO's proposal partially complies with the directives in the First Compliance Order. Specifically, we find that NYISO's proposed revisions to OATT sections 32.1.1.1 and 32.5 comply with the Commission's directives to: (1) specify that the interconnection to the distribution system of facilities participating in NYISO's markets exclusively through an Aggregation is not subject to the SGIP; and (2) revise the definition of Small Generating Facility to exempt facilities connecting to the distribution system that participate in NYISO's markets exclusively through an Aggregation from the SGIP.⁴⁴ However, we note that, in the definition of Small Generating Facility in OATT section 32.5, the revised subsections (iii) and (iv) appear to refer to the same type of interconnection and thus, to be redundant: "(iii) interconnections proposed solely for the purpose of net metering; (iv) facilities proposing to interconnect to the New York State Transmission System or the Distribution System solely for the purpose of net metering."⁴⁵ Accordingly, we direct NYISO to file, within 30 days of the date of issuance of this order, a further compliance filing that either removes subsection (iii) or (iv) from the definition of Small Generating Facility or explains why these subsections are not redundant.

19. We find that NYISO's proposal partially complies with the directives in the First Compliance Order to: (1) revise OATT Attachment S and any other affected tariff provisions to resolve the apparent inconsistencies and ambiguities in its tariff, or explain why such revisions are not necessary; and (2) identify and explain the relevant tariff provisions that codify the rules by which DERs that are not subject to the SGIP may obtain CRIS and ERIS.⁴⁶ While NYISO proposes clarifying revisions to the definition of ERIS in OATT section 25.1.2, NYISO does not propose any revisions to the definition of ERIS in OATT section 32.5. NYISO's proposal therefore does not comply with the directive in the First Compliance Order to revise OATT Attachment S and *any other affected tariff provisions* to resolve the apparent inconsistencies and ambiguities in its tariff. In addition, NYISO proposes revisions to OATT section 32.1.1.1 to explain that DERs that are not subject to the SGIP are deemed to have ERIS "in the MW amount of the generating facility's net seasonal capacity (in aggregate where it includes multiple energy production devices), *as memorialized in the applicable interconnection agreement with the respective Connecting Transmission Owner.*"⁴⁷ A Connecting Transmission Owner is defined, in part, as the counterparty to the Standard Small Generator

⁴⁴ First Compliance Order, 179 FERC ¶ 61,198 at P 54.

⁴⁵ Proposed NYISO OATT § 32.1.1.1.

⁴⁶ First Compliance Order, 179 FERC ¶ 61,198 at P 57.

⁴⁷ Proposed NYISO OATT § 32.1.1.1 (emphasis added).

Interconnection Agreement,⁴⁸ whereas DERs interconnecting to the distribution system to participate in NYISO's markets exclusively through aggregation are not subject to the SGIP.⁴⁹ Therefore, DERs would not sign a Standard Small Generator Interconnection Agreement with a Connecting Transmission Owner. Accordingly, consistent with the directive in the First Compliance Order to resolve the apparent inconsistencies in NYISO's tariff, we direct NYISO to file, within 30 days of the date of issuance of this order, a further compliance filing that (1) revises the definition of ERIS in OATT section 32.5, consistent with its proposed revisions in OATT section 25.1.2, and (2) revises OATT section 32.1.1.1 to resolve the inconsistency by, for example, removing the phrase, "with the respective Connecting Transmission Owner."

B. Eligibility to Participate in RTO/ISO Markets through a Distributed Energy Resource Aggregator: Participation Model

20. In Order No. 2222, the Commission added section 35.28(g)(12)(i) to the Commission's regulations to require each RTO/ISO to establish distributed energy resource aggregators as a type of market participant and to allow distributed energy resource aggregators to register distributed energy resource aggregations under one or more participation models in the RTO's/ISO's tariff that accommodate the physical and operational characteristics of the distributed energy resource aggregation.⁵⁰ The Commission explained that each RTO/ISO can comply with the requirement to allow distributed energy resource aggregators to participate in its markets by modifying its existing participation models to facilitate the participation of distributed energy resource aggregations, by establishing one or more new participation models for distributed energy resource aggregations, or by adopting a combination of those two approaches. The Commission stated that it will evaluate each proposal submitted on compliance to determine whether the proposal meets the goals of Order No. 2222 to allow distributed

⁴⁸ NYISO OATT § 32.5 (defining a Connecting Transmission Owner as "The New York public utility or authority (or its designated agent) that: (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System or Distribution System at the Point of Interconnection, and (iii) *is a Party to the Standard Small Generator Interconnection Agreement*" (emphasis added)).

⁴⁹ *E.g.*, First Compliance Order, 179 FERC ¶ 61,198 at P 54 (directing NYISO to revise its tariff to "specify that the interconnection to the distribution system of facilities participating in NYISO's markets exclusively through an Aggregation is not subject to the Small Generator Interconnection Procedures").

⁵⁰ Order No. 2222, 172 FERC ¶ 61,247 at P 130.

energy resources to provide all services that they are technically capable of providing through aggregation.⁵¹

1. First Compliance Order

21. In the First Compliance Order, the Commission found that NYISO's proposal partially complied with the participation eligibility requirements of Order No. 2222, in particular, the requirement to allow distributed energy resource aggregators to register distributed energy resource aggregations under one or more participation models in NYISO's tariff that accommodate the physical and operational characteristics of the distributed energy resource aggregation.⁵² However, the Commission found 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.⁵³ 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.⁵⁴

22. At the same time, the Commission stated that changing NYISO's rules 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.⁵⁵ Thus, the Commission clarified that NYISO should implement its Aggregation model in the fourth quarter of 2022, as proposed,⁵⁶ and also make a further compliance filing proposing an effective date

⁵¹ *Id.* In Order No. 2222, the Commission clarified that "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. *Id.* P 3 n.9 (citing *Elec. Storage Participation in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127, at P 78 (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*, 964 F.3d 1177 (D.C. Cir. 2020)).

⁵² First Compliance Order, 179 FERC ¶ 61,198 at PP 88-89.

⁵³ *Id.* P 92.

⁵⁴ *Id.* P 93 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 130).

⁵⁵ *Id.*

⁵⁶ The Commission subsequently granted NYISO's motion to extend the effective date for its proposed tariff revisions in its compliance filing from the fourth quarter of 2022 to a flexible effective date no later than December 31, 2026. *See N.Y. Indep. Sys.*

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 and visibility concerns.

2. Rehearing Order

23. In response to NYISO's request for rehearing of the directive of the First Compliance Order concerning ancillary services, the Commission sustained the result of the First Compliance Order.⁵⁷ However, the Commission further explained its finding 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 that NYISO "allow DERs in heterogeneous Aggregations to provide all of the ancillary services that they are technically capable of providing through aggregation[.]"⁵⁸ For example, the Commission stated "we further explain that the Commission's directive in paragraph 93 of the [First Compliance Order] does not require NYISO to allow a heterogeneous Aggregation to simultaneously make available multiple operating reserve products."⁵⁹

24. Turning to NYISO's request that the Commission find that the developing market improvements and solutions described in its rehearing request would satisfy the First Compliance Order, the Commission noted 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 First Compliance Order.⁶⁰ Therefore, while the Commission sustained the result of the First Compliance Order, the Commission stated that it would not prejudice the merits of NYISO's compliance filing in response to the First Compliance Order.

3. Filing

25. On compliance, NYISO states that the additional explanation that the Commission provided in the Rehearing Order will assist NYISO's efforts to fully comply with the Commission's instructions.⁶¹ NYISO states that it will develop market rules that permit

Operator, Inc., Notice of Extension of Time, Docket No. ER21-2460-004 (2022).

⁵⁷ Rehearing Order, 181 FERC ¶ 61,054 at P 13.

⁵⁸ *Id.* PP 13-14 (quoting First Compliance Order, 179 FERC ¶ 61,198 at P 93).

⁵⁹ *Id.* P 14.

⁶⁰ *Id.* P 15 & n.37.

⁶¹ Transmittal at 9 (noting that the Commission "explained the NYISO is not

DERs participating in an Aggregation to provide the ancillary services that they are technically capable of providing, review them with stakeholders, and file them with the Commission for its consideration well in advance of implementing the proposed rules. NYISO states that it is already working with its stakeholders to develop these rules. NYISO states that it believes that it can implement the Commission's directive, as clarified, at the same time it implements the remaining tariff revisions proposed in this docket, i.e., no later than December 31, 2026.

4. Commission Determination

26. As NYISO commits to do in its filing, we direct NYISO to make an additional compliance filing following its stakeholder process, and by no later than December 31, 2024, to address the compliance directive from the First Compliance Order concerning ancillary services, as further explained in the Rehearing Order. Until it submits this additional compliance filing, we further direct NYISO to submit an informational filing within six months of the date of issuance of this order, and informational filings every six months thereafter, to provide updates to the Commission on the progress of this stakeholder process and on compliance with the directive from the First Compliance Order concerning ancillary services.

C. Market Participation Agreements

27. In Order No. 2222, the Commission added section 35.28(g)(12)(ii)(h) to the Commission's regulations to require each RTO/ISO to establish market rules that address market participation agreements for distributed energy resource aggregators.⁶² The Commission required each RTO/ISO to revise its tariff to include a standard market participation agreement that defines the distributed energy resource aggregator's role and responsibilities and its relationship with the RTO/ISO, which an aggregator is required to execute before it can participate in the RTO/ISO markets. The Commission stated that this market participation agreement must include an attestation that the distributed energy resource aggregator's aggregation is compliant with the tariffs and operating procedures of the distribution utilities and the rules and regulations of any RERRA.

1. First Compliance Order

28. In the First Compliance Order, the Commission found that NYISO's proposal partially complied with the Order No. 2222 requirement with respect to market participation agreements.⁶³ Specifically, the Commission found that NYISO's proposed

required to allow a heterogeneous Aggregation to simultaneously make available multiple operating reserve products").

⁶² Order No. 2222, 172 FERC ¶ 61,247 at P 352.

attestation in section 4.1.10.5 of its Services Tariff did not comply with the requirement that the distributed energy resource aggregator must attest that its aggregation complies with the tariffs and operating procedures of the distribution utilities and the rules and regulations of any RERRA.⁶⁴ The Commission found that NYISO's proposal did not comply because NYISO's proposed attestation in section 4.1.10.5 required the Aggregator to attest that the Distribution Utility and RERRA have authorized the individual facilities and Aggregation to *participate in the wholesale markets*. The Commission stated that, consistent with the specific requirement of Order No. 2222, this attestation should instead address compliance with the tariffs and operating procedures of the Distribution Utility and rules and regulations of any RERRA. Accordingly, the Commission directed NYISO to revise the requirement in section 4.1.10.5 of its Services Tariff to specify that the Aggregator must attest to its compliance with the tariffs and operating procedures of the Distribution Utilities and the rules and regulations of any RERRA, consistent with the requirement of Order No. 2222.⁶⁵

2. Filing

29. On compliance, NYISO proposes to amend section 4.1.10.5 of its Services Tariff to comply with the Commission's directive:

Prior to an Aggregation's participation in the wholesale market, and each individual facility's participation in an Aggregation, the Aggregator shall attest that the individual facility(ies) and Aggregation: (i) have been authorized to participate in the ISO Administered Markets by the applicable Distribution Utility and Relevant Electric Retail Regulatory Authority, (ii) will comply with all applicable tariffs and operating procedures of the Distribution Utility and/or Transmission Owner to whose electric facilities it interconnects, (iii) will comply with all applicable rules and regulations of the Relevant Electric Retail Regulatory Authority for each of the Distributed Energy Resources it enrolls⁶⁶

⁶³ First Compliance Order, 179 FERC ¶ 61,198 at P 335.

⁶⁴ *Id.* P 336 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 352).

⁶⁵ *Id.* P 337.

⁶⁶ Transmittal at 21-22; proposed NYISO Services Tariff § 4.1.10.5.

3. Comments

30. Clean Energy Advocates argue that NYISO's proposal does not comply with the First Compliance Order because section 4.1.10.5 of the Services Tariff retains the provision that Aggregators must attest that the individual facilities in an Aggregation "have been authorized to participate in the ISO Administered Markets by the applicable Distribution Utility and Relevant Electric Retail Regulatory Authority[,]" even though the Commission rejected this provision in the First Compliance Order.⁶⁷

4. Commission Determination

31. We find that NYISO's proposal partially complies with the directive in the First Compliance Order. Consistent with the directive in the First Compliance Order, NYISO proposes in section 4.1.10.5 of its Services Tariff that the Aggregator must attest to its compliance with the tariffs and operating procedures of the Distribution Utility and the rules and regulations of any RERRA.⁶⁸ However, NYISO also resubmits in section 4.1.10.5 the language that the First Compliance Order found not compliant, i.e., the language requiring Aggregators to attest that the Aggregation has been authorized by the Distribution Utility and RERRA to participate in NYISO's markets.⁶⁹ For the same reasons discussed in the First Compliance Order,⁷⁰ we direct NYISO to file, within 30 days of the date of issuance of this order, a further compliance filing which removes from section 4.1.10.5 of the Services Tariff the proposed requirement that the Aggregator attest that the individual facility(ies) and Aggregation "(i) have been authorized to participate in the ISO-Administered Markets by the applicable Distribution Utility and Relevant Electric Retail Regulatory Authority."

The Commission orders:

(A) NYISO's compliance filing is hereby accepted, subject to further compliance filings, as discussed in the body of this order.

⁶⁷ Clean Energy Advocates' Comments at 3.

⁶⁸ First Compliance Order, 179 FERC ¶ 61,198 at P 337.

⁶⁹ See *id.* P 336 ("We find that NYISO's proposal does not comply because NYISO's proposed attestation in section 4.1.10.5 requires the Aggregator to attest that the Distribution Utility and RERRA have authorized the individual facilities and Aggregation to participate in the wholesale markets. Consistent with the specific requirement of Order No. 2222, *this attestation should instead address* compliance with the tariffs and operating procedures of the Distribution Utility and rules and regulations of any RERRA.") (emphasis added).

⁷⁰ See *supra* note 68.

(B) NYISO is hereby directed to submit a further compliance filing, within 30 days of the date of issuance of this order, as discussed in the body of this order.

(C) NYISO is directed to submit an additional compliance filing following its stakeholder process, and no later than December 31, 2024, to address the compliance directive from the First Compliance Order concerning ancillary services, and informational filings to provide updates to the Commission on the progress of this stakeholder process and on compliance with the directive from the First Compliance Order concerning ancillary services, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

Appendix A

Tariff Records Filed

New York Independent System Operator, Inc.

FERC FPA Electric Tariff

NYISO Tariffs

Docket No. ER21-2460-003

Effective Date To Be Determined

[NYISO OATT, 25.1 OATT Att S Introduction \(13.0.0\)](#)

[NYISO OATT, 25.3 OATT Att S Deliverability Interconnection Standard \(7.0.0\)](#)

[NYISO OATT, 32.1 OATT Att Z Application \(15.0.0\)](#)

[NYISO OATT, 32.5 OATT Att Z Appendices \(22.0.0\)](#)

[NYISO MST, 4.1 MST Market Services - General Rules \(22.0.0\)](#)