

158 FERC ¶ 61,127  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Norman C. Bay, and Colette D. Honorable.

New York Independent System Operator, Inc.

Docket Nos. EL07-39-007  
EL07-39-008  
ER08-695-005  
ER08-695-006  
ER10-2371-001  
ER10-2371-002  
ER10-2371-003

ORDER DISMISSING, AS MOOT, REQUESTS FOR CLARIFICATION AND  
REHEARING AND REJECTING COMPLIANCE FILING

(Issued February 3, 2017)

1. In this order, the Commission dismisses, as moot, the requests for rehearing and clarification of its March 19, 2015 order in this proceeding, pertaining to mitigation of buyer-side market power in the New York Independent System Operator, Inc.'s (NYISO) Installed Capacity (ICAP) market.<sup>1</sup> The Commission likewise rejects, as moot, NYISO's filing submitted to comply with the March 2015 Order, with no substitute tariff filing required.

**I. Background**

2. At its current stage, this proceeding concerns NYISO's application of market power mitigation to Special Case Resources (SCRs)<sup>2</sup> in NYISO's ICAP market. Thus, we discuss here only the background and rulings of those Commission orders that are directly relevant at this stage of the proceeding.

3. NYISO's buyer-side market power mitigation rules provide that, unless exempt from mitigation, new capacity resources must offer capacity in a Mitigated Capacity

<sup>1</sup> *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,208 (2015) (March 2015 Order).

<sup>2</sup> SCRs are usually industrial or commercial companies that, in exchange for an advanced payment, agree to curtail power usage, usually by shutting down, when requested to do so by NYISO.

Zone<sup>3</sup> at a price at or above the applicable offer floor and continue to meet the offer floor until their capacity clears 12 monthly auctions.<sup>4</sup> By order issued in this proceeding on September 30, 2008, the Commission found that it is appropriate for NYISO's buyer-side market power mitigation rules to apply to SCRs in the same manner as all other market participants subject to those rules.<sup>5</sup> Consistent with this finding, the Commission granted rehearing on the applicability of market power mitigation rules to SCRs and directed NYISO to file revised tariff sheets reflecting this ruling.<sup>6</sup> On May 20, 2010, the Commission addressed requests for rehearing of the September 2008 Order and accepted, subject to conditions, NYISO's compliance filing to the September 2008 Order to implement new market power mitigation rules for SCRs.<sup>7</sup> In that order, the Commission agreed with NYISO that it is reasonable for new SCRs that are subject to mitigation to have a different offer floor because the costs and characteristics of new SCRs are different from new generators.<sup>8</sup> However, the Commission stated that it was not its intent to interfere with state programs that further specific legitimate policy goals and found it appropriate to exempt payments an SCR receives from such programs from the calculation of the Offer Floor proposed by NYISO. In addition, based on the information provided in the proceeding, the Commission found it reasonable to allow an exemption for two state programs - New York State Energy Research and Development Authority (NYSERDA) rebates and Consolidated Edison's (ConEd) Distribution Load Relief Program - and to exclude the payments received by SCRs under these programs from the calculation of the Offer Floor.<sup>9</sup> Thus, the Commission placed conditions on its acceptance of NYISO's compliance filing and directed NYISO, among other things, to

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<sup>3</sup> The term Mitigated Capacity Zone is defined in section 2.13 of the NYISO Services Tariff to include "New York City and any Locality added to the definition of 'Locality' accepted by the Commission on or after March 31, 2013."

<sup>4</sup> NYISO, Services Tariff, § 23.4.5.7 (3.0.0).

<sup>5</sup> See *N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 41 (2008) (September 2008 Order) (reversing earlier determination to exclude SCRs from the section 3.2.3 tariff language).

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

<sup>7</sup> *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,170 (2010) (May 2010 Order).

<sup>8</sup> *Id.* PP 132-133.

<sup>9</sup> *Id.* P 137.

file tariff sheets listing the criteria it proposed to use in evaluating whether to include a specific subsidy or other benefit in its calculation of Offer Floors for future SCR programs.<sup>10</sup>

4. In the March 2015 Order, the Commission addressed requests for rehearing and clarification of the May 2010 Order and accepted, subject to condition, NYISO's compliance filing to the May 2010 Order. As requested by NYISO, the Commission granted clarification to confirm that the Commission did not intend for NYISO to rule on the legitimacy of particular state programs, but stated that neither did it intend to grant a blanket exemption for all state programs that subsidize demand response.<sup>11</sup> The Commission also granted rehearing and reversed the earlier determination that payments under ConEd's Distribution Load Relief Program and NYSERDA's rebate program should not be included in the SCR Offer Floor. Accordingly, the Commission clarified that it was not necessary for NYISO to provide a list of criteria to govern the determination of whether payments under specific programs should be excluded from the SCR Offer Floor determination. Consistent with these determinations, the Commission directed NYISO to file revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to provide that, unless ruled exempt by Commission order on a request for exemption filed by the state, all rebates and other benefits from state programs must be included in the SCR Offer Floor.<sup>12</sup>

5. NYISO filed a timely request for clarification of the March 2015 Order, and the Indicated New York Transmission Owners (Indicated NY Transmission Owners)<sup>13</sup> and New York Public Service Commission (New York Commission) each filed a timely request for rehearing.

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<sup>10</sup> *Id.* P 138.

<sup>11</sup> March 2015 Order, 150 FERC ¶ 61,208 at P 30 & n.37 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 89 (2011)).

<sup>12</sup> *Id.* P 30.

<sup>13</sup> Indicated NY Transmission Owners for purposes of this pleading consist of ConEd, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation. This group has the same participants as the New York Transmission Owners (identified in *infra* n.15), except that this group does not include Central Hudson Gas & Electric Corporation (Central Hudson) or Niagara Mohawk Power Corporation (Niagara Mohawk).

## **II. Discussion**

### **A. NYISO's Request for Clarification**

6. On March 30, 2015, NYISO filed a request for clarification with respect to whether the Commission's ruling in the March 2015 Order regarding the treatment of rebates and other benefits from state programs received by SCRs is applicable to Mitigated Capacity Zones other than New York City. NYISO states that its filing does not constitute support for or opposition to the March 2015 Order.<sup>14</sup>

7. NYISO states that, while it seems likely that the Commission intended for the ruling to apply to all Mitigated Capacity Zones, the proceedings in the instant case have, to date, been confined to the New York City market power mitigation issues. On the other hand, NYISO states, there is nothing in the text of the March 2015 Order that expressly confines the Commission's holdings to New York City, and NYISO states that it has argued in the past that the same rules should apply to all Mitigated Capacity Zones.

8. On April 2, 2015, New York Transmission Owners (NY Transmission Owners)<sup>15</sup> filed an answer in opposition to NYISO's filing, arguing that clarification is unnecessary because the plain language of the March 2015 Order resolves NYISO's question. They state that the record and the proposals at issue in this proceeding and the Commission's resulting determinations do not address payments in other Mitigated Capacity Zones. They further state that NYISO's filing constitutes an untimely motion to expand the scope of this proceeding as well as an end run around the stakeholder process.

### **B. Requests for Rehearing**

9. On April 20, 2015, the New York Commission and Indicated NY Transmission Owners each filed a request for rehearing of the March 2015 Order with respect to the Commission's reversal of the May 2010 ruling providing for the exemption of payments under the NYSEDA rebate program and the ConEd Distribution Load Relief Program from the calculation of the SCR Offer Floor.

10. The New York Commission argues that the March 2015 Order departs, without explanation, from established policies for eliminating barriers to demand response participation in wholesale markets and preventing interference with state programs.<sup>16</sup>

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<sup>14</sup> NYISO March 30, 2015 Request for Clarification at 6.

<sup>15</sup> New York Transmission Owners consist of Central Hudson, ConEd, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation.

The New York Commission claims that the March 2015 Order impedes the participation of demand response resources in the ICAP market by forcing such resources to refrain from also participating in the ConEd Distribution Load Relief Program in order to avoid onerous market power mitigation penalties. Further, according to the New York Commission, it erects another unnecessary barrier against demand response participation in the ICAP market by imposing mitigation on certain SCR resources that receive NYSERDA rebates.

11. Both Indicated NY Transmission Owners and the New York Commission assert that the Commission failed to provide a reasoned explanation for reversing its prior determination exempting payments from state demand response programs from the calculation of the Offer Floor and, therefore, the decision is arbitrary and capricious. They contend that the Commission ignored an extensive record supporting its determination in the May 2010 Order. In particular, they argue that ConEd's program is designed to defer or avoid costly distribution system upgrades, and payments under the program are made to a retail customer, pursuant to a retail tariff in order to provide retail load relief.<sup>17</sup> They argue that payments of both NYSERDA and ConEd are unrelated to a customer's participation in the ICAP market and should not count as "subsidies" or "other benefits" for purposes of calculating the Offer Floor. In addition, both parties point to the March 2015 Order's acknowledgment of a statement by NYISO that it does not believe that the programs at issue are currently causing uneconomic entry that would harm the capacity markets.<sup>18</sup>

**C. NYISO's April 20, 2015 Compliance Filing in Docket No. ER10-2371-002**

12. In the March 2015 Order, the Commission directed NYISO to file revisions to its Services Tariff to provide that, unless ruled exempt by Commission order on a request for exemption filed by the state, all rebates and other benefits from state programs must be included in the SCR Offer Floor. In its compliance filing, NYISO proposes to modify section 23.4.5.7.5 of its Services Tariff to provide that the change in the Offer Floor calculation is only applicable to SCRs located in New York City.

13. On April 20, 2015, NYISO submitted in Docket No. ER10-2371-002 its filing in compliance with the March 2015 Order. Notice of the filing was published in the

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<sup>16</sup> New York Commission Request for Rehearing at 10 (citing Energy Policy Act of 2005, Pub. L. No. 109-58, § 1252(f), 119 Stat. 594, 965 (2005)).

<sup>17</sup> Indicated NY Transmission Owners Request for Rehearing at 5.

<sup>18</sup> New York Commission Request for Rehearing at 11. Indicated NY Transmission Owners Request for Rehearing at 6 (citing March 2015 Order, 150 FERC ¶ 61,208 at P 71, Dissent at 3).

*Federal Register*, 80 Fed. Reg. 23,266 (2015), with interventions and protests due on or before May 11, 2015. None was filed.

**D. Commission Determination**

14. In an order being issued concurrently with this order, the Commission finds merit in the New York Commission's complaint seeking a blanket exemption for SCRs that excludes these resources from NYISO's buyer-side market power mitigation rules effective as of the date of that order.<sup>19</sup> In the Complaint Order, the Commission finds that, because SCRs have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices, they should not be subject to NYISO's buyer-side market power mitigation rules.<sup>20</sup> Hence, the Commission has granted a blanket exemption in the Complaint Order that exempts SCRs from NYISO's buyer-side market power mitigation rules, effective as of the date of that order. This being the case, the questions raised in NYISO's request for clarification and in the requests for rehearing of the March 2015 Order are no longer pertinent as they have been rendered moot by our threshold determination that SCRs will not be subject to NYISO's buyer-side market power mitigation rules.

15. The determination in the Complaint Order also renders moot NYISO's April 20, 2015 compliance filing, which was responding to directives that are no longer in force. Accordingly, we will reject NYISO's compliance filing. In light of the findings being made in the Complaint Order, we are not directing that any replacement tariff filing be submitted in this docket, as this is no longer necessary.

The Commission orders:

(A) NYISO's request for clarification is hereby dismissed, as discussed in the body of this order.

(B) The requests for rehearing are hereby dismissed, as discussed in the body of this order.

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<sup>19</sup> See *N.Y. State Public Service Commission v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137 (2017) (Complaint Order).

<sup>20</sup> *Id.* PP 30-31.

(C) NYISO's April 20, 2015 compliance filing is hereby rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.