

165 FERC ¶ 61,247  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

NRG Curtailment Solutions, Inc.

Docket No. EL18-188-000

v.

New York Independent System Operator, Inc.

ORDER ON COMPLAINT, DENYING TARIFF WAIVER,  
AND ESTABLISHING A PAPER HEARING

(Issued December 20, 2018)

■ On July 24, 2018, NRG Curtailment Solutions, Inc. (NRG Solutions) submitted, under Federal Power Act (FPA) sections 206 and 306,<sup>1</sup> a request for waiver of the New York Independent System Operator, Inc.'s (NYISO) Market Administration and Control Area Services Tariff (Services Tariff) and manual provisions, or, in the alternative, a complaint against NYISO regarding NYISO's metering requirement (July 24 Submittal). Specifically, NRG alleges that NYISO's requirement, that Curtailment Service Providers (CSPs) and Responsible Interface Parties (RIPs) that participate in NYISO's installed capacity (ICAP) markets must use New York State Department of Public Service (NY DPS)<sup>2</sup>-certified Meter Service Providers (MSPs) or Meter Data Service Providers (MDSPs)<sup>3</sup> to install and read non-revenue grade interval

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<sup>1</sup> 16 U.S.C. §§ 824e; 825e (2012).

<sup>2</sup> NY DPS includes the New York Public Service Commission (New York Commission), whose chairman is the chief executive officer of the NY DPS.

<sup>3</sup> In accordance with the New York Commission's policy, NY DPS is responsible for certifying MSPs and MDSPs. An MSP provides meter services, consisting of the installation, maintenance, testing, and removal of meters and related equipment. An MDSP provides meter data services, consisting of meter reading, meter data translation and customer association, validation, editing, and estimation. NYISO, Metering Fundamentals for Demand Response, Demand Response In-Depth Course, June 26-28, 2018. Available at

meters, is unjust and unreasonable, and unduly discriminatory. For the reasons described below, we deny the request for waiver of NYISO's tariff and grant, in part, the complaint. We also establish a paper hearing

## **I. Background**

■ In 2001, the New York Commission opened electric metering services for large retail customers to competition. In doing so, it approved a competitive metering practices and procedure manual, which stated that the New York Commission would “(a) allow customers eligible for competitive metering to contract directly with MSPs or MDSPs; (b) prohibit a [d]irect [c]ustomer from acting as its own MSP or MDSP.....”<sup>4</sup> In 2006, the New York Commission directed electric utilities to develop and deploy, to the extent feasible and cost effective, advanced metering systems for the benefit of all customers. Competitive meter service programs were established, and New York Commission certifications were designed to evaluate the qualifications of applicants to install and read meters for utility billing purposes.<sup>5</sup>

■ NYISO's Services Tariff currently requires demand response providers to comply with verification and validation procedures and to provide certain hourly metering data as set forth in the “ISO Procedures.”<sup>6</sup> NYISO's manuals describing these procedures state that NYISO will only accept metering data from a NY DPS-certified MSP or MDSP.<sup>7</sup> A demand response provider may seek certification from NY DPS to become an MSP or

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[https://www.nyiso.com/public/webdocs/markets\\_operations/services/market\\_training/workshops\\_courses/Training\\_Course\\_Materials/Demand-Response-In-Depth-MT-309/Metering-Fundamentals.pdf](https://www.nyiso.com/public/webdocs/markets_operations/services/market_training/workshops_courses/Training_Course_Materials/Demand-Response-In-Depth-MT-309/Metering-Fundamentals.pdf).

<sup>4</sup> See New York Commission, Order Concerning Competitive Metering in the Matter of Competitive Metering and in the Matter of Competitive Opportunities Regarding Electric Service, Case Nos. 00-E-0165 and 94-E-0952 (Jan. 24, 2001).

<sup>5</sup> See New York Commission Aug. 13, 20018 Comments (New York Commission Comments) at 6-7 (internal citations omitted).

<sup>6</sup> NYISO, Services Tariff, § 5.12.11.1; Services Tariff, Attachment G, § 22.8.

<sup>7</sup> See, e.g., NYISO Emergency Demand Response Program Manual, Manual No. 7, section 5.1 (Manual No. 7); Revenue Metering Requirements Manual, Manual No. 25, section 4.3 (Manual No. 25). See also Installed Capacity Manual, Manual No. 4, section 4.12.2; Day-Ahead Demand Response Programs Manual, Manual No. 5, section 6.1.

MDSP, or the demand response provider can use a transmission owner, all of which have been granted NY DPS certification to read meters.

## **II. Waiver Request and Complaint**

■ NRG Solutions states that it is a demand response aggregator that provides demand response in NYISO's ICAP market as a CSP and RIP under NYISO's Services Tariff, and is one of the largest suppliers of demand response to the market.<sup>8</sup> According to NRG Solutions, NY DPS grants certifications only to entities that will provide meters or meter reading services for utility billing, functions that are unrelated to demand response services provided by CSPs/RIPs. NRG explains that despite being aware of that fact, NYISO continues to require MSP/MDSP certifications. NRG Solutions contends that demand response providers must contract for MSP/MDSP services from a limited pool of existing NY DPS-certified MSPs/MDSPs, many of whom are NRG Solutions' direct competitors. Despite efforts to resolve the metering service issue through the NYISO stakeholder process, NRG Solutions argues, this matter remains unresolved. Therefore, NRG Solutions asks the Commission to waive pertinent provisions of NYISO's Services Tariff and manuals so it can report meter data directly to NYISO.<sup>9</sup> In the alternative, NRG Solutions asks the Commission to find that NYISO's existing MSP/MDSP requirement is unjust and unreasonable and to replace it with a process by which a demand response provider can self-certify that its metering practices meet or exceed the NY DPS certification requirements.<sup>10</sup>

### **A. Tariff Waiver Request**

■ NRG Solutions requests waiver of two sections of NYISO's Services Tariff, Section 5.12.11.1 and Attachment G, Section 22.8, and corresponding manual provisions that require CSPs and RIPs participating in the NYISO-administered ICAP market to use a NY DPS-certified MSP or MDSP to install and read non-revenue interval meters.<sup>11</sup> NRG Solutions asks the Commission to grant the waiver and to allow NRG to read and report its own meter data.

■ NRG Solutions argues that it acted in good faith by meeting the standards set forth in the Services Tariff and manuals. For instance, it twice applied for MDSP certification

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<sup>8</sup> July 24 Submittal at 4.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 18.

<sup>11</sup> *See supra* n.7.

but NY DPS denied NRG Solutions' requests in 2011 and 2018. NRG Solutions states that, in 2011, NY DPS denied its request for MDSP certification because NRG Solutions does not read meters for utility billing purposes, and NY DPS's review process for MSP/MDSP certification is geared to performing this function.<sup>12</sup> NRG Solutions notes that, in denying its certification request, NY DPS stated that it could no longer afford to conduct reviews to determine the eligibility of applicants to implement programs for which its review was never intended, and that it had communicated this to NYISO and strongly urged NYISO to develop its own eligibility process, tailored specifically for determining an applicant's fitness to conduct demand response programs.<sup>13</sup> In 2018, according to NRG Solutions, NY DPS provided similar reasoning in denying its request for MDSP certification.<sup>14</sup>

■ In addition, NRG Solutions contends that it has acted in good faith by having multiple conversations with NYISO since 2004, and has participated in multiple stakeholder conversations at NYISO, most recently in 2017 and 2018, regarding NYISO's MSP and MDSP certification requirement.<sup>15</sup> However, NYISO has failed to act and change its metering requirements.

■ NRG Solutions contends that the tariff waiver is limited in scope because it seeks waiver only of tariff sections and manual provisions that require a CSP or RIP to have MSP or MDSP certification from NY DPS. NRG Solutions argues that NYISO could claim that a waiver would result in having no rules in place to read data; however, NRG Solutions contends that such an argument should be dismissed because NYISO currently has a requirement that market participants must supply accurate data.<sup>16</sup> Also, NRG

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<sup>12</sup> NRG Solutions notes that in denying its application, NY DPS stated that NRG Solutions is seeking to be "deemed eligible to provide a service that is wholly separate from what MDSPs were created to do" and that NY DPS does not issue MDSP certifications to a company solely "to act as a provider of NYISO demand response programs." July 24 Submittal at 7-8 (citing Attachment A, Apr. 13, 2011 email from NY DPS to NRG Solutions denying certification request (Attachment A)).

<sup>13</sup> *Id.*, Attachment A.

<sup>14</sup> *Id.*, Attachment B, Mar. 30, 2018 email from NY DPS to NRG Solutions denying certification request (Attachment B)).

<sup>15</sup> *Id.* at 7-8. NRG Solutions states that after NY DPS denied its certification request, in 2011, NRG Solutions discussed the matter with NYISO staff and in stakeholder conversations on multiple occasions.

<sup>16</sup> *Id.* at 9 (citing NYISO, Services Tariff, § 10, Recordkeeping and Audit ("The ISO and each Customer shall keep complete and accurate records of service taken or

Solutions argues that NYISO's reliance on NY DPS certification is misplaced because NY DPS itself states that its eligibility review is inappropriate in this context and has urged NYISO to create its own eligibility process.<sup>17</sup> Moreover, NRG Solutions states that the waiver is limited in scope because it seeks waiver only for a limited time, until NYISO issues other standards or concludes that its current requirement is sufficient.

■ NRG Solutions contends that the waiver request addresses the concrete problem of NYISO's requirement that demand response providers either obtain MDSP certification from NY DPS, a certification that is unavailable just for NYISO's specific purpose of eligibility in the ICAP markets, or secure such services from a limited pool of incumbent MDSPs who may no longer provide metering services in place of a customer's utility company.<sup>18</sup> NRG Solutions argues that the limited options for CSPs and RIPs to comply with NYISO's MDSP requirement raise barriers to entry and present competition concerns.<sup>19</sup> NRG Solutions continues that demand service providers seeking to participate in NYISO's demand response program must contract with incumbent MDSPs, many of whom are also CSPs/RIPs competing in the same market, which presents a conflict of interest where such MDSPs host data of competitors.<sup>20</sup> NRG Solutions then states its belief that the list of incumbent MSPs/MDSPs includes those who may no longer provide meters or metering services in place of a customer's utility and thus, if they applied today for certification, they would not satisfy NY DPS's criteria for issuing the certification.<sup>21</sup>

■ NRG Solutions adds that NYISO's MSP or MDSP requirement is unnecessary for CSPs and RIPs that possess or will invest in technology and procedures that meet or exceed the NY DPS requirements for MSP or MDSP certification. Moreover, NRG Solutions notes that NYISO already offers CSPs an alternative to an MSP, although not

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provided under the ISO Services Tariff including, but not limited to, meter readings"); Manual No. 25).

<sup>17</sup> *Id.* at 9 (citing Attachment A.)

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.* at 11-12 & n.31 (citing "Distributed Energy Resources Roadmap Update," Oct. 24, 2016 Presentation to Market Issues Working Group (MIWG) at 24, [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_miwg/meeting\\_materials/2016-10-24/DER%20Roadmap%20Updates.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2016-10-24/DER%20Roadmap%20Updates.pdf).)

<sup>20</sup> *Id.* at 11.

<sup>21</sup> *Id.* at 10.

an MDSP, for reading meters.<sup>22</sup> NRG Solutions contends that a similar alternative to utilize an MDSP should be available to CSPs and RIPs meeting applicable industry standards. NRG Solutions notes that robust industry standards for meter data validation already exist and that other Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) accept self-certifications by demand response providers who adhere to these standards.<sup>23</sup> NRG Solutions states that it commits to exceeding all certification requirements, which would avoid concerns about the quality of data provided to NYISO.<sup>24</sup>

■ NRG Solutions states that granting the tariff waiver does not have undesirable consequences and would assist NYISO in designing robust, open, and competitive markets. NRG Solutions notes that NYISO has discussed removing the current MSP/MDSP certification requirement since 2004, when it proposed that demand response providers identify the transmission owner or MDSP supplying data while NYISO would retain the ability to audit meter data.<sup>25</sup> NRG Solutions, citing NYISO's recent stakeholder discussions on this issue, contends that NYISO has taken no meaningful action, and that relief from NYISO is not expected for months, or longer, if ever achieved under NYISO's current timetable.<sup>26</sup> NRG Solutions argues that, because alternative industry standards are available to replace NYISO's MDSP requirement,

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<sup>22</sup> *Id.* at 11 & n.30 (citing Manual No. 7 at section 5.1 ("Non-revenue grade meters meeting the 2 [percent] accuracy requirement as defined in Section 5.1.1 may be installed by CSPs as long as they are certified by a Professional Engineer as meeting ANSI [American National Standards Institute] C12 standards and are periodically tested and calibrated in accordance with the standards applicable to MSPs"))).

<sup>23</sup> *Id.* at 11. Although NRG Solutions does not identify these organizations, NYISO has studied PJM Interconnection, L.L.C. (PJM), ISO-New England, Inc., and the California Independent System Operator.

<sup>24</sup> *Id.* at 11.

<sup>25</sup> *Id.* at 12 & n.32 (citing Price Responsive Load Working Group, Status of NYISO Demand Response Programs, Feb. 9, 2004, at 5, 6. Available at [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_prlwg/meeting\\_materials/2004-02-09/prlwg\\_update\\_02092004.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_prlwg/meeting_materials/2004-02-09/prlwg_update_02092004.pdf)).

<sup>26</sup> *Id.* at 12 & n.33 (citing NYISO Meter Data Study Final Report, Dec. 8, 2017, at sec. 2.5, Analysis of Meter Institutions, sec. 2.6, Recommendations on Metering Institutions. Table 1 summarizes other ISO/RTO approaches for metering. Available at [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_miwg/meeting\\_materials/2017-12-13/NYISO%20Meter%20Data%20Study%20Report.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2017-12-13/NYISO%20Meter%20Data%20Study%20Report.pdf)).

granting the tariff waiver and permitting self-certification would not have undesirable consequences on meter data accuracy. Finally, NRG Solutions suggests that, until NYISO develops a permanent solution within its stakeholder process, the Commission could require NRG Solutions to abide by the North American Energy Standards Board's (NAESB) validate, edit, and estimate standards, which PJM currently uses.<sup>27</sup>

■ NRG Solutions states that, without the tariff waiver, many of its customers will no longer be able to participate in the demand response market when its current MSP/MDSP can no longer perform the meter reading service. NRG Solutions states that when its current MDSP can no longer perform the service, it will not be in compliance with the NYISO Tariff unless it contracts with third-party competitors for the meter reading service.<sup>28</sup>

## **B. Complaint**

■ NRG Solutions claims that NYISO's Services Tariff is unjust and unreasonable and unduly discriminatory because it limits participation as a demand response provider in the NYISO ICAP market.<sup>29</sup> Relying on the same arguments from its waiver request, NRG Solutions contends that the current MSP/MDSP requirement makes it difficult for demand response providers to comply with verification and validation procedures and to provide certain hourly metering data, as required in the Services Tariff.

■ NRG argues that, while it has the option of using a transmission owner to read its meters, this option creates an uneven playing field, and is expensive, time consuming, and not available to all its demand response customers. NRG Solutions states that to procure and install the correct type of meters would cost several million dollars. Moreover, NRG Solutions claims that not all utility service territories are set up to manage third party requests for installation of the correct type of utility meter needed for participation in NYISO demand response programs. NRG Solutions argues that meter installation could be significantly delayed because it may not be a priority for utilities. Lastly, for some New York utilities, the option to install an interval billing meter is unavailable, and customers of those utilities could migrate to NRG Solutions' competitors or exit the market completely.<sup>30</sup>

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<sup>27</sup> *Id.* at 13 & n.35.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.* at 14-15.

<sup>30</sup> *Id.* at 16-17.

■ NRG Solutions emphasizes that NYISO itself recognizes that its requirement, that demand response providers use NY DPS-certified MSPs/MDSPs, poses a potential barrier to entry but has not acted.<sup>31</sup> Therefore, NRG Solutions requests that the Commission find that NYISO's meter service requirement is unjust and unreasonable and replace it with the self-certification process.<sup>32</sup>

### **III. Notice and Responsive Pleadings**

■ Notice of NRG Solutions' request for waiver and complaint was published in the *Federal Register*, 83 Fed. Reg. 36,924 (July 31, 2018), with protests and interventions due on or before August 13, 2018. The New York Transmission Owners<sup>33</sup> filed a motion to intervene. The New York Commission filed a notice of intervention and comments.

■ On August 13, 2018, NYISO filed an answer (NYISO Answer). On August 27, 2018, NRG Solutions filed a motion for leave to answer the NYISO Answer and its answering response (NRG Solutions Response).

■ On October 15, 2018, NRG Solutions filed a motion to lodge a notice from the New York Commission of that commission's proposed rulemaking that would terminate its MSP and MDSP programs and eliminate all certifications relating to these programs (New York Commission Notice).

■ On October 23, 2018, NYISO filed a motion for leave to answer and supplemental answer (NYISO Supplemental Answer).

#### **A. NYISO Answer**

■ NYISO contends that the Commission should deny NRG Solutions' waiver request because it does not satisfy the Commission's four-part test for granting tariff waivers. Also, NYISO denies that its existing meter requirements in the Services Tariff are unjust and unreasonable, as NRG Solutions asserts.

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<sup>31</sup> See *supra* P 11.

<sup>32</sup> July 24 Submittal at 17-18.

<sup>33</sup> The New York Transmission Owners consist of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Power Supply Long Island; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.



■ First, NYISO contends that the requested waiver is not limited in scope because it essentially requests the establishment of an entirely new requirement for meter data service providers, i.e., that they may self-certify. NYISO cites Commission precedent stating that tariff waiver requests may not be used as mechanisms for establishing a new process not included in the underlying tariff.<sup>34</sup> NYISO states that its tariffs and manuals do not include the requirements necessary to implement and administer the proposed selfcertification process. NYISO rejects also NRG Solutions' self-certification proposal and the proposal's reliance on PJM's meter data service requirements. NYISO argues that other ISO or RTO processes cannot simply be dropped into its procedures and implemented without tailoring the requirements to NYISO's demand response programs and NYISO's unique regional characteristics.<sup>35</sup>

■ Second, NYISO argues that the requested waiver does not remedy a concrete problem. It points out that NRG Solutions has not demonstrated that, absent the requested waiver, it cannot obtain meter data services under NYISO's existing rules nor has it demonstrated that its resources are unable to participate in NYISO-administered markets. NYISO emphasizes that transmission owners provide meter data services. It states that the majority of RIPs use transmission owners for their meter data services.<sup>36</sup> NYISO further states that, were NRG Solutions' current MDSP to stop providing meter data services, NRG Solutions could use a transmission owner, and that, with one exception, New York transmission owners do not compete with RIPs in the SCR program. Also, NYISO continues, not all the NY DPS-certified MDSPs that are not transmission owners compete with NRG Solutions.

■ Third, NYISO contends that the requested waiver would have undesirable consequences. NYISO argues that the requested waiver could be read as applying to all CSPs and RIPs. NYISO does not have tariff requirements or procedures in place that establish standards for a self-certification meter data services process. Without its existing requirements, NYISO states that it does not have a mechanism to ensure that a

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<sup>34</sup> NYISO Answer at 4-5 (citing *ISO New England, Inc.*, 164 FERC ¶ 61,003, at P 47 (2018) (finding that new tariff processes may not be effectuated by a tariff waiver; they must be filed as proposed tariff provisions under FPA section 205(d)).

<sup>35</sup> *Id.* at 6.

<sup>36</sup> NYISO states that CSPs/RIPs are not required to disclose whether they use an MDSP or a transmission owner for their meter data services. However, based on its experience in administering its demand response program, it understands that the majority of CSPs/RIPs use transmission owners for their meter data services. *Id.*

CSP or RIP will satisfy acceptable metering standards or be subject to necessary oversight.<sup>37</sup>

■ In regard to the complaint, NYISO states that its metering requirements provide CSPs/RIPs with several avenues to obtain the required meter data services and that most CSPs/RIPs, including those that are NY DPS-certified MSPs/MDSPs, use transmission owners. NYISO states that NY DPS's determinations on NRG Solutions' applications do not make NYISO's tariffs unjust or unreasonable or otherwise inadequate. NYISO repeats that NRG Solutions has not demonstrated that, if its current MDSP provider were to stop providing services, it would be unable to obtain meter data services or its customers would be unable to participate in NYISO-administered markets.<sup>38</sup>

■ Furthermore, NYISO states that, through the stakeholder process and in connection with its current initiative to more fully integrate Distributed Energy Resources (DER)<sup>39</sup> participation into its wholesale markets,<sup>40</sup> it is currently evaluating potential revisions to its metering requirements, based on a consultant analysis and stakeholder input. NYISO states that it will discuss the results of this analysis with stakeholders in the third quarter of 2018, and that it anticipates developing a final proposal, including applicable tariff revisions, by the end of 2018. NYISO plans to implement the new requirements as part of its Dispatchable DER participation model, currently scheduled for 2021.<sup>41</sup> NYISO urges that, because numerous complex matters concerning the metering requirements for demand side resources and DER must be carefully evaluated and vetted,

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<sup>37</sup> NYISO Answer at 8.

<sup>38</sup> *Id.*

<sup>39</sup> NYISO describes DER as “a broad category of resources that includes distributed generation, energy storage technologies, combines heat and power systems, and microgrids. A DER [generally serves] the customer’s power needs, but may . . . sell excess capability to the grid..... [NYISO’s] goal is to . . . more fully integrate DERs into energy, ancillary services, and capacity markets.” See <https://home.nyiso.com/blog/distributed-energy-resources/>.

<sup>40</sup> NYISO refers to the outlined process for integrating DER in its February 2017 report, *Distributed Energy Resources Roadmap for New York’s Wholesale Electricity Markets (DER Roadmap)*. The *DER Roadmap* is available at [http://www.nyiso.com/public/webdocs/markets\\_operations/market\\_data/demand\\_response/DER\\_Roadmap/Distributed\\_Energy\\_Resources\\_Roadmap.pdf](http://www.nyiso.com/public/webdocs/markets_operations/market_data/demand_response/DER_Roadmap/Distributed_Energy_Resources_Roadmap.pdf).

<sup>41</sup> NYISO Answer at 9-11.

the Commission not displace NYISO's ongoing stakeholder process. Rather, the revisions are appropriate to address metering requirements in New York.<sup>42</sup>

### **B. New York Commission Comments**

■ The New York Commission confirms that it only certifies entities as MSPs and MDSPs if the entity provides meters or reads meters in place of a customer's utility company, and does not certify entities, such as NRG Solutions, that solely provide wholesale demand response services.<sup>43</sup> The New York Commission requests that the Commission find that the NY DPS MSP and MDSP certification programs should not be used as the basis for demonstrating that wholesale demand response providers are capable of accurately measuring and verifying load reductions. The New York Commission contends that NRG's requested relief is appropriate and supports it.<sup>44</sup>

■ The New York Commission states that, at the time its competitive metering programs were established, it neither anticipated nor intended that NYISO would use NY DPS certifications as a requirement for demand response providers to participate in the wholesale markets, a requirement that it considers entirely outside its purpose of creating competitive meter service programs. It states that the NY DPS' review processes are designed solely to evaluate the qualifications of applicants to install and read meters for utility billing purposes and are entirely devoid of criteria specific to CSP or RIP functions in the wholesale demand response market.<sup>45</sup>

■ The New York Commission states that it may re-evaluate the certification programs and whether they should be terminated because competition amongst MSPs and MDSPs has not materialized. Thus, irrespective of the merits of applying the certification requirements to CSP and RIP functions in wholesale demand response markets, such certifications may no longer be valid or available, depending upon the outcome of the re-evaluation.<sup>46</sup>

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<sup>42</sup> *Id.* at 12.

<sup>43</sup> New York Commission Comments at 2.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 7.

<sup>46</sup> *Id.* at 8. *See supra* P 18, New York Commission Notice of proposal to terminate the certification program.

### C. NRG Solutions Response

■ NRG Solutions disputes NYISO's assertion that it could rely on the utilities to provide meter data services for resources that currently receive service from NRG Solutions' MDSP, and contends that utility metering is not a viable market option. NRG Solutions explains that 50 percent of its meters it obtained through utility meter data services, but the remaining 50 percent are NRG's own meters. According to NRG Solutions, replacing its own existing meters with utility meters would be prohibitively expensive and extremely slow. Moreover, NRG Solutions argues, not all utility service territories are set up to manage third-party requests for installation of the type of meter needed to participate in the NYISO program.<sup>47</sup> NRG Solutions states that, to the extent that the Commission agrees with NRG Solutions, installing meters from the transmission owners is not reasonable, and that if the New York Commission does eliminate the certification program then NYISO's Services Tariff and procedures will indeed be unjust and unreasonable because the requirement to obtain the New York Commission certification will be impossible.

■ NRG Solutions is concerned that, while waiting for meter installation, its customers would not be able to sell capacity, which could trigger withholding concerns and potentially precipitate needless price spikes in the ICAP market. NRG Solutions argues that this could also create an uncompetitive market because other demand response providers would not be subject to these delays and costs.<sup>48</sup>

■ Concerning circumvention of the NYISO stakeholder process, NRG Solutions repeats that the discussion of proposed changes to the New York Commission certification requirement began in 2004 and that the mis-match between New York Commission rules and NYISO's tariff was raised at multiple meetings, notably during 2016, 2017, and 2018. NRG Solutions points out that NYISO's stakeholder process does not contemplate implementation of stakeholder process proposals until 2021 or 2022. NRG Solutions emphasizes that 14 years have passed and contends that the stakeholder process has been exhausted.<sup>49</sup>

■ NRG Solutions disputes that its waiver request is overly expansive. It states that it only seeks a waiver from the requirement that the demand response providers receive an MDSP certification from the New York Commission, and that it fully commits to meeting all other requirements for demand response providers. Moreover, its waiver

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<sup>47</sup> NRG Solutions Response at 2.

<sup>48</sup> *Id.* at 2-3.

<sup>49</sup> *Id.* at 3-4.

request does not seek a whole new process in the absence of any other applicable tariffs or procedures, and the waiver is limited to NRG Solutions and only from the MDSP certification requirement.<sup>50</sup>

**D. NYISO Supplemental Answer**

■ NYISO reiterates that it is developing through its stakeholder process a proposal to replace its current metering requirements with new third-party metering rules. NYISO states that it continues to develop a proposal that will permit market participants to use third party metering authorities, known as Meter Service Entities (MSEs), to report meter data to NYISO.<sup>51</sup> NYISO also restates that it expects to review draft tariff revisions with stakeholders by the end of this year and intends to submit these draft tariff revisions for stakeholder approval as part of a broad package of tariff enhancements to integrate DERs under its DER Roadmap.<sup>52</sup>

**IV. Discussion**

**A. Procedural Matters**

■ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and the timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

■ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept the NRG Solutions Response and grant its motion to lodge the New York Commission Notice. We accept also the NYISO Supplemental Answer. These documents have provided information that has assisted us in our decision-making process.

**B. Substantive Matters**

**1. Tariff Waiver**

■ We deny NRG Solutions' request for waiver of NYISO Services Tariff Section 5.12.11.1 and Attachment G, Section 22.8. We find that NRG Solutions' request for waiver would effectively establish a new process, self-certification, not currently

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<sup>50</sup> *Id.* at 4.

<sup>51</sup> NYISO Supplemental Answer at 2.

<sup>52</sup> *Id.* at 4.

found in the Services Tariff. We agree with NYISO that implementation of a self-certification process would necessitate that its Services Tariff prescribe metering standards, detailed documentation requirements, and oversight. These requirements are not included in the current tariff or manuals, and a waiver request is an inappropriate vehicle to implement them.<sup>53</sup>

## 2. Complaint

■ Although we deny NRG Solutions' request for waiver, we find that NYISO's existing Services Tariff is unjust and unreasonable, unduly discriminatory or preferential to the extent it requires CSPs and RIPs that are not transmission owners, but that wish to provide metering services in the wholesale electric markets that NYISO administers, to be certified as MSPs or MDSPs by the NY DPS. Through its MSP and MDSP certification programs, NY DPS certifies only entities that also provide metering services for the state's retail electric market. The result, even if not so intended, is that retail market participation is a prerequisite for demand response resource participation in NYISO's wholesale market. Indeed, in this proceeding, the New York Commission disavows the role ascribed to it through NYISO's requirements and explicitly states that its certification program was designed to facilitate retail billing service, not for participation in wholesale markets or for measuring load reductions. In fact, the New York Commission has issued a notice proposing to eliminate the state MSP and MDSP programs and the certifications related to these programs.<sup>54</sup>

■ Therefore, we find that NYISO's requirement to use either a transmission owner or an existing NY DPS-certified MSP or MDSP is unduly discriminatory to customers in service territories where transmission owners do not perform metering services. NYISO provides no explanation justifying the disparate treatment. While demand response providers can meet NYISO's requirement by seeking NY DPS certification, NYISO does not dispute, and the New York Commission confirms, NRG Solutions' assertion that NY DPS twice denied NRG certification to become an MSP/MDSP simply because NRG Solutions does not provide retail utility billing services. Yet, there is no indication that NRG Solutions lacks the ability to provide accurate data. We understand that having a set of standards for evaluating, measuring, and verifying customer meter data is a vital part of ensuring the submission of accurate meter data to NYISO. However, the record in this proceeding does not support a finding that the challenged certification requirements—designed for utility billing services in the retail market—are a just and

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<sup>53</sup> See *ISO New England, Inc.*, 164 FERC ¶ 61,003 at P 47 (denying the waiver request because the request effectively creates an entire process that is not in the existing tariff).

<sup>54</sup> See NRG Solutions' October 15 motion to lodge New York Commission Notice.

reasonable and not unduly discriminatory means for NYISO to ensure accurate measurement of load reductions in the wholesale market.

■ While we recognize that NYISO is examining its metering requirements as part of its broader DER Roadmap, we find that the current metering requirements are unjust and unreasonable and unduly discriminatory or preferential, and as such, are in need of immediate remedy. Accordingly, we grant the complaint, in part, and establish paper hearing procedures to supplement the record regarding the appropriate remedy. Initial briefs are due within 45 days after issuance of this order, and reply briefs are due within 30 days thereafter. Any person who is not currently a party to the proceeding and who wishes to submit a brief must file a notice of intervention or motion to intervene, as appropriate.

■ Parties participating in this paper hearing are to address the following:

1. What metering requirements could be implemented in NYISO, would not be unduly discriminatory and yet would effectively evaluate, measure, and verify customer meter data? Please describe the advantages and disadvantages of various approaches, and identify any factors that the Commission should consider in this paper hearing.
2. How would such metering requirements address the verification of meter data and auditing of metering service providers?
3. How would such metering service eligibility criteria ensure that metering services are available to customers in all geographic areas of NYISO?
4. Would such metering requirements allow self-certification for demand response providers in NYISO? If not, please explain why.

■ When the Commission institutes a section 206 proceeding on a complaint, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the complaint and no later than five months subsequent to the date of the complaint. In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206.<sup>55</sup> While we do not anticipate requiring refunds here, we will establish the statutorily directed refund

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<sup>55</sup> See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

effective date at the earliest date allowed, July 24, 2018, the date NRG Solutions filed the Complaint.

■ Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision.<sup>56</sup> We expect to be able to render a decision within four months of receiving reply briefs, or May 31, 2019.

The Commission orders:

(A) NRG Solutions' request for tariff waiver is hereby denied, as discussed in the body of this order.

(B) NRG Solutions' complaint is hereby granted, in part, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R Chapter I), the Commission hereby institutes paper hearing procedures in this proceeding, concerning issues raised in the Complaint, including NYISO's metering requirements for CSPs/RIPs as discussed in the body of this order.

(D) The refund effective date in Docket No. EL18-188-000, established pursuant to section 206 of the FPA, shall be July 24, 2018, the date of the Complaint.

(E) Parties are hereby permitted to submit initial briefs on or before 45 days from the date of this order. Parties are hereby permitted to file reply briefs on or before 30 days of the date of filing of initial briefs.

(F) All interested persons who wish to submit briefs but who are not currently parties to Docket No. EL18-188-000 may submit notices of intervention or motions to intervene, as appropriate, within 21 days of the date of this order. The briefing schedule described in Ordering Paragraph (E) will apply to such persons.

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<sup>56</sup> 16 U.S.C. § 824e(b).



(G) The Secretary is hereby directed to publish this order in the *Federal Register*.

By the Commission. Commissioner McIntyre in not voting on this order.  
Commissioner McNamee is voting present.

( S E A L )

Kimberly D. Bose,  
Secretary.