

Relief from Section 5.12.11.1.2 would allow Galt to submit, and require the NYISO to accept, data that Galt failed to provide the NYISO by the submission deadline. Language in the Waiver Request suggests, however, that Galt may instead be seeking relief only from the penalty the NYISO assessed as a result of Galt's failure to submit timely data. The relevant penalty provisions are contained in Services Tariff Section 5.14.2.3.1. As explained further below, the NYISO opposes Galt's Waiver Request inasmuch as it seeks approval to submit its untimely data and does not oppose the Waiver Request to the extent it seeks relief from the assessed penalty.

The NYISO's SCR program is a reliability-based demand response program that is activated in response to: (i) a forecasted reserves shortage, (ii) an ISO declared Major Emergency State, and (iii) a request for assistance for load relief purposes or as the result of a local reliability rule. In addition to activation for such events, the NYISO schedules two performance tests in each Capability Period to confirm the ability of each SCR to meet its capacity obligation.⁴ RIPs, such as Galt, act as aggregators of individual SCRs to facilitate the SCR's participation in the program.

In order to accurately measure the performance of SCRs in events or tests, the NYISO collects certain metered Load data from each resource to establish a baseline, called the Average Coincident Load ("ACL"), and to measure the resource's response in an event or test. For the majority of resources participating in the SCR program the ACL is calculated as the average of the resource's Load during its top twenty (20) Load hours that are coincident with the New York

⁴ Each SCR is required to demonstrate its maximum registered kW once during each Capability Period. RIPs have the option for a SCR to use its performance in a mandatory event hour in lieu of performance in the first performance test. Therefore, if a SCR has performed in a mandatory event, the SCR may use its performance in the event as a proxy for its test value and be relieved of the requirement to perform in the first performance test. The SCR has the obligation to perform in the first performance test in the absence of a proxy test value, and resources that meet the appropriate operational characteristics are required to perform in the second performance test.

Control Area's ("NYCA") top forty (40) Load hours of the previous Capability Year.⁵ In certain circumstances where a RIP does not have the appropriate data to calculate the resource's ACL, the Services Tariff allows a SCR to be enrolled with a Provisional ACL.⁶ In the Summer 2014 Capability Period, Galt enrolled five (5) resources with Provisional ACLs (the "Provisional Resources").⁷

Services Tariff Section 5.12.11.1.2 establishes the rules for enrollment and verification of Provisional Resources. Among those rules is a requirement that each resource enrolled with a Provisional ACL submit a Provisional ACL value, event and test performance data, and Verification Data necessary to confirm the resource's Provisional ACL. The Provisional ACL is an estimate of the resource's ACL and is submitted by a RIP when it enrolls the resource in the SCR program. Event and test data is used by the NYISO to verify the resource's actual performance as against its enrolled values, and is due 75 days after an event or test. Verification Data is metered Load data required to compute a Verified ACL for the resource following each Capability Period in which a Provisional ACL was used to enroll a SCR. The Verified ACL is used to ensure that the resource's performance is measured from an accurate baseline. A SCR's

⁵ NYISO Services Tariff § 5.12.11.1.1.

⁶ A Resource may be enrolled with a Provisional ACL when at least one of the following conditions are met: "(i) the SCR has not previously been enrolled with the ISO for the seasonal Capability Period for which the SCR enrollment with a Provisional ACL is intended, (ii) the SCR was enrolled with a Provisional ACL in the Prior Equivalent Capability Period and was required to report fewer than twenty (20) hours of metered Load verification data that correspond with the Capability Period SCR Load Zone Peak Hours based on the meter installation date of the SCR, (iii) the RIP attempting to enroll the SCR with a Provisional ACL is not the same RIP that enrolled the SCR in the Prior Equivalent Capability Period and interval billing meter data for the SCR from the Prior Equivalent Capability Period is not obtainable by the enrolling RIP and not available to be provided to the enrolling RIP by the ISO." NYISO Services Tariff § 5.12.11.1.2.

⁷ In its Waiver Request, Galt states that it enrolled four (4) resources in the NYISO's SCR program for the Summer 2014 Capability Period. Galt Power Inc. September 30, 2015 Request for Waiver at 3 [hereinafter *Galt Request*]. According to the NYISO's records Galt enrolled five (5) resources with Provisional ACL's for that Capability Period. Galt failed to provide the required Verification Data for all five resources.

Verified ACL is an average of the top twenty (20) one-hour peak Loads from the Capability Period SCR Load Zone Peak Hours in which the SCR was enrolled with a Provisional ACL.⁸ The Services Tariff requires Verification Data to be submitted to the NYISO; the submission deadline is provided on the NYISO's public ICAP Event Calendar available to all NYISO Market Participants.⁹ Verification Data is the data at issue in Galt's Waiver Request. Galt enrolled five (5) resources with Provisional ACLs for the Summer 2014 Capability Period and appropriately provided the Provisional ACL and performance test data.¹⁰ Galt failed to supply Verification Data by the required January 14, 2015 deadline.

If a RIP fails to provide Verification Data for a Provisional Resource, Services Tariff Section 5.12.11.1.2 directs that the Verified ACL of the SCR be set to zero, and subjects the RIP to the Tariff's penalty provisions. Section 5.14.2.3.1 provides that where a SCR's Provisional ACL exceeds its Verified ACL (calculated with the resource's Verification Data) there is a shortfall, calculated as the value of the Provisional ACL minus the Verified ACL. The Verified ACL for each Provisional Resource was set to zero because Galt failed to submit Verification Data in accordance with the Services Tariff.

II. Motion to Intervene

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity and ancillary services in New York State. The NYISO further administers various

⁸ NYISO Services Tariff § 5.12.11.1.2.

⁹ NYISO ICAP Event Calendar, http://icap.nyiso.com/ucap/public/evt_calendar_display.do.

¹⁰ The NYISO did not activate its SCR program for an event in the Summer 2014 Capability Period. The only activation for the Capability Period was the performance test.

demand response programs in each of those wholesale markets pursuant to Commission-approved tariffs. In this proceeding, Galt is requesting a waiver of a requirement of the SCR program established by the NYISO Services Tariff. The NYISO has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all rights of a party.

III. Comments

Galt's Waiver Request fails to articulate a specific request for relief. Although Galt states that it seeks waiver of Services Tariff Section 5.12.11.1.2 "to allow for relief from the assessment of penalties associated with its failure to timely provide verification data,"¹¹ and that it "does not request retroactive resettlement of performance factors for the Summer 2015 or Winter 2015/2016 capability periods,"¹² its Waiver Request also states that "[a]bsent a waiver from the Commission, the NYISO cannot recognize valid provisional ACL performance data,"¹³ and concludes by asking the Commission to grant relief from Section 5.12.11.1 "in order to allow the NYISO to accept and recognize the provisional ACL performance data submitted to the NYISO ... and provide relief from the performance penalty."¹⁴ Based upon (i) the NYISO's review of Galt's Waiver Request, (ii) the facts known to the NYISO at this time, (iii) the potential for adverse market impacts, and (iv) Commission guidance on waiver requests, the NYISO strongly opposes Galt's Waiver Request inasmuch as Galt seeks to have the NYISO accept Verification Data for its Provisional Resources enrolled in the Summer 2014 Capability

¹¹ *Galt Request* at 1.

¹² *Id.*

¹³ *Id.* at 8.

¹⁴ *Id.* at 10.

Period. However, while the NYISO has found no compelling reason to relieve Galt of the penalty it incurred, if the Commission determines in its judgment that such relief is warranted, the NYISO requests that the Commission grant relief only from Services Tariff Section 5.14.2.3.1.

The Commission evaluates a waiver request based on the specific facts and circumstances of the request,¹⁵ and upon evaluation of a four-part test: (i) whether the requester has acted in good faith; (ii) whether the request is of limited scope; (iii) whether the request will remedy a concrete problem; and (iv) whether the waiver, if granted, will have undesirable consequences such as harming third parties.¹⁶ Because the Commission’s evaluation of a waiver is highly dependent on the particulars of each request, the Commission has recognized that the granting of one waiver request is not precedent for granting future requests.¹⁷

The NYISO has no reason to believe that Galt’s error was made in bad faith, but its request is not limited in scope. Although Galt states that its error was “addressed immediately when it was discovered,”¹⁸ Galt initially attempted to remedy its violation almost six months after the data was due and more than two months after it received notice from the NYISO that it potentially violated the Services Tariff. Indeed, Galt’s Waiver Request was submitted to the Commission more than eight (8) months after the data was due on January 14, 2015. Accepting

¹⁵ See, e.g., *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060, at P 17 (2013).

¹⁶ *New York Power Authority*, 139 FERC ¶ 61,157, at P 28 (2012); *Air Energy TCI Inc.*, 143 FERC ¶ 61,172, at P 16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P 10 (2010).

¹⁷ See, *New York Power Authority*, 139 FERC ¶ 61,157 at P 30 (after finding the requested waiver sufficiently limited to the specific facts presented, the Commission stated that granting the waiver “does not constitute precedent for allowing market participants to avoid these or any other conditions set forth in the Services Tariff.”).

¹⁸ *Galt Request* at 5.

Galt's data at this late of a date would significantly impact previously settled auctions, affect all other Installed Capacity Suppliers that participated in the NYISO's Summer 2015 ICAP Market, and potentially require the NYISO to manually override automated market software.

The NYISO provided notice to Galt that it was potentially subject to a penalty for failing to submit Verification Data on March 25, 2015, and, because Galt had not previously participated as a RIP in the NYISO's markets, followed up its letter with a conference call on March 26, 2015 to further explain the letter and potential penalties. After providing Galt with the opportunity to respond to the NYISO's notice of potential penalty, and after answering additional questions on the NYISO's SCR program on April 7, 2015, the NYISO assessed the penalty to Galt on May 27, 2015. It was only after the NYISO assessed that penalty that Galt attempted to submit its Verification Data.

The facts here are distinguishable from other recent waiver requests granted by the Commission. In Docket No. ER15-1926, the NYISO did not oppose the waiver request of Innoventive Power LLC ("Innoventive") despite that company's failure to submit certain performance data within the 75-day window established by the Services Tariff. Unlike Galt, however, Innoventive recognized its mistake and sought to remedy its error within one day of the submission deadline. Similarly, in Docket No. ER15-1951, the NYISO did not oppose the waiver request of the New York Power Authority ("NYPA") that also failed to submit performance data within the 75-day window because NYPA submitted its data within one month of the submission deadline. As compared to Galt, both Innoventive and NYPA sought waiver of the filing deadline from the Commission within a timeframe that allowed the NYISO to include the data in the calculations for the subsequent Capability Period; accepting the data had no effect on the market. That is markedly different than the timeframe at issue in Galt's Waiver Request.

Because it took Galt over eight months from the date the Verification Data was due to submit its waiver request, the NYISO respectfully disagrees with Galt's claim that the request for waiver is of limited scope. While data submission deadlines are typically seen as administrative in nature, they provide a structure upon which the NYISO can efficiently run its markets.

In order for the SCR program to operate efficiently, the NYISO requires RIPs to provide necessary data within specific timeframes. Unlike traditional Generators, SCRs are not required to have real-time communication and telemetry. Thus, SCR submission deadlines are necessary to ensure that the NYISO can effectively measure and verify the performance of thousands of individual SCRs in a timely manner to prepare for the following capability period, to accurately compensate RIPs for the capacity they bring to the market, and to assess penalties as necessary for under-performance.

Unlike the waivers granted to Innoventive and NYPA, granting Galt's Waiver Request of Section 5.12.11.1.2 would have significant impact on the NYISO as well as all other Installed Capacity Suppliers. If the Commission were to grant waiver of Services Tariff Section 5.12.11.1.2, the NYISO would be required to recalculate the ACL and performance for each of Galt's Provisional Resources. Those values were initially calculated in advance of the NYISO's Summer 2015 Capability Period (beginning May 1, 2015), and used in the ICAP auctions for that Capability Period. Waiver of Section 5.12.11.1.2 would require the NYISO to change already settled performance values for the Summer 2015 Capability Period. Furthermore, accepting Galt's data would change certain performance values for the Winter 2015/2016 Capability Period that have already been calculated and posted in the NYISO's Demand Response Information System software. The enrollment period for November, the first month of the Winter Capability Period, has already closed and the spot auction is scheduled to run on October 27. A waiver of

Section 5.12.11.1.2 would therefore impact at least one settled auction month of the Winter Capability Period, and potentially additional months depending on when the waiver was granted. Additionally, SCR performance factor values, Market Participant performance factor values, and SCR program performance factor values are set at the beginning of the Capability Period, and although the spot auctions for December through April have not run, changing this data would be burdensome to the NYISO and require manual changes to automated systems. This creates the potential for market errors.

Most importantly, if the NYISO is required to change any historical performance data for Galt, the change will not only affect Galt, but will also require re-running and resettling of all the Summer 2015 auctions for all Installed Capacity Suppliers that participated in the NYISO's ICAP Market. To do so would be a very serious undertaking with significant adverse impacts to the entire marketplace, which the Commission has acknowledged in a previous Order.¹⁹ In that proceeding regarding the NYISO's buyer-side market power mitigation rules, the Commission directed the NYISO to recalculate certain offer-floor mitigation exemption determinations.²⁰ The Commission stopped short, however, of requiring the NYISO to re-run previously settled auctions. The Commission stated that:

[r]e-running past auctions would create market uncertainty for market participants and require resolving complex questions. For example, if any resources that cleared in the original auction (and actually provided capacity services) did not clear the re-run auction, the question would arise whether such a resource should be paid, and if so, how much. Conversely, if any resources failing to clear the original auction (and thus, not providing capacity services in that period) would clear in the re-run auction, the question would arise whether such a resource should be paid

¹⁹ *Astoria Generating Co., L.P. v. New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189 (2012), *reh'g granted in part on other grounds*, 151 FERC. ¶ 61,044 (2015).

²⁰ *Astoria Generating Co., L.P.* 140 FERC ¶ 61,189 at P 141.

(despite not providing capacity services in the past period), and if so, how much. We conclude that it is preferable not to re-run these past auctions, in order to provide greater certainty for market participants, and to avoid the need to resolve these complex issues.²¹

The third criterion used by the Commission to determine whether to grant a waiver is whether there is a concrete problem to be remedied. In the instant matter, the NYISO believes there are two issues upon which waiver could be granted: (i) relief from Services Tariff Section 5.12.11.1.2, allowing Galt to submit Verification Data for its Provisional Resources; or (ii) relief from Section 5.14.2.3.1, nullifying the penalty assessed to Galt. As previously stated, the NYISO opposes relief from the requirements of Section 5.12.11.1.2. However, the NYISO defers to the Commission on whether Galt has met its burden of proof with respect to Section 5.14.2.3.1.

Finally, with respect to the fourth criterion, granting waiver at this juncture would lead to undesirable consequences. For all the reasons discussed herein, the NYISO respectfully disagrees with Galt's belief that waiver of Section 5.12.11.1.2 is administrative in nature and would have no impact on the market. Requiring the NYISO to accept Galt's verification data pursuant to that section would then require the NYISO, in applying its Services Tariff, to re-run performance calculations and to re-settle auctions. The NYISO strongly opposes that outcome.

Further, the NYISO believes that the data submission deadlines for Market Participants are fair, reasonable, and necessary to promote efficient markets. However, to the extent that the Commission believes Galt has met its burden of proof with respect to waiver of Services Tariff Section 5.14.2.3.1, the NYISO does not oppose a waiver. The NYISO believes that it is highly important that the Commission continue to reinforce the importance of tariff deadlines that

²¹ *Id.*

enhance certainty and assist the NYISO in administering open and competitive markets. The NYISO is concerned that a waiver in this proceeding may raise questions regarding the applicability of data reporting requirements in future Capability Periods and as they apply to other RIPs.

In its Waiver Request Galt states that it has “implemented internal corrective measures to ensure this mistake is not repeated,”²² but, aside from the Waiver Request, Galt has not provided to, or demonstrated, any new internal controls to the NYISO. The NYISO requests that the Commission direct Galt to provide its compliance plan to the NYISO including additional controls to address the instant violation and mitigate the potential for future violations.

IV. Communications and Correspondence

All communications and service with regard to this filing should be directed to:

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²² *Galt Request* at 6.

V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully request that the Commission (i) grant this motion to intervene, and (ii) consider these comments in making its decision on Galt's request.

Respectfully submitted,

/s/ Gregory J. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Rensselaer, NY this 21st day of October, 2015.

By: /s/ John C. Cutting

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