

February 13, 2024

**Submitted Electronically**

Honorable Debbie-Anne A. Reese  
Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street N.E.  
Washington, D.C. 20426

**Re: *New York Independent System Operator, Inc.*, Docket No. ER23-2040-000, *et al.*; Response to Second Deficiency Letter**

Dear Acting Secretary Reese:

On December 15, 2023, the Federal Energy Regulatory Commission (“Commission”) Office of Energy Market Regulation (“OEMR”) issued a deficiency letter in this proceeding (“Second Deficiency Letter”).<sup>1</sup> The Second Deficiency Letter comprises two enumerated questions regarding the New York Independent System Operator, Inc.’s (“NYISO”) June 1, 2023, Federal Power Act (“FPA”) Section 205 filing in this proceeding.<sup>2</sup> The NYISO hereby submits its response to the Second Deficiency Letter, including the Affidavit of Robert Pike (“Attachment I”), the NYISO’s Vice President of Market Operations.

**I. Overview, Justification, and Status of NYISO Effort to Integrate Distributed Energy Resources and Aggregations**

**a. June 1 Filing**

On June 1, 2023, the NYISO submitted proposed revisions to its Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariff (“Services Tariff”) applicable to Distributed Energy Resource<sup>3</sup> and Aggregation participation in the NYISO-administered Energy, Ancillary Services, and Installed Capacity markets. The tariff revisions proposed in this docket complement, clarify, and enhance the market rules applicable to DER and Aggregations that were submitted on June 27, 2019, in Docket No. ER19-2276-000,

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<sup>1</sup> *New York Indep. Sys. Operator, Inc.*, Docket No. ER23-2040-000, *et al.*, (Dec. 15, 2023) (unpublished letter order) (“Second Deficiency Letter”).

<sup>2</sup> *New York Indep. Sys. Operator, Inc.*, Proposed Tariff Revisions Regarding the Participation of Distributed Energy Resources and Aggregations, Docket No. ER23-2040-000 (Jun. 1, 2023) (“June 1 Filing”).

<sup>3</sup> Capitalized terms that are not defined in this filing shall have the meaning specified in Section 2 of the Services Tariff and Section 1 of the OATT.

*et al.*,<sup>4</sup> and accepted by the Commission on January 23, 2020.<sup>5</sup> The June 1 Filing requested a Commission Order within sixty (60) days of the date of the filing, *i.e.*, by Monday, July 31, 2023. Issuance of an Order accepting the tariff revisions proposed in the June 1 Filing would have allowed the NYISO to implement its DER and Aggregation participation model in 2023.

The tariff revisions proposed in the June 1 Filing are the result of an extensive, years-long effort to implement the DER and Aggregation participation model first proposed in 2019 and are necessary to implement that participation model. The proposals reflect considerable stakeholder engagement and input within the NYISO's shared governance process and garnered broad supermajority support from the NYISO's stakeholders. The tariff revisions proposed in this proceeding were unanimously approved by the Business Issues Committee ("BIC") on February 15, 2023, and the Management Committee ("MC") on February 22, 2023, with limited abstentions at the BIC and no abstentions at the MC.<sup>6</sup>

The June 1 Filing advised the Commission that the NYISO expected to be able to implement its DER and Aggregation participation model in the third quarter of 2023, and as early as August 1, 2023.<sup>7</sup> As explained in that filing, the precise effective date would depend, among other things, on the completion of development, testing, and deployment of the various software and related applications necessary to administer the participation model.<sup>8</sup>

b. First Deficiency Letter

On July 18, 2023, OEMR issued a letter advising the NYISO that the June 1 Filing was deficient, requesting further information, and directing the NYISO to respond within thirty (30) days ("First Deficiency Letter").<sup>9</sup> The First Deficiency Letter included questions related to the NYISO's proposed 10 kW minimum capability requirement.

The NYISO submitted its response to the First Deficiency Letter on August 17, 2023 ("First Deficiency Response"),<sup>10</sup> which included comprehensive answers to the inquiries regarding the proposed 10 kW minimum capability requirement. The responses to OEMR's

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<sup>4</sup> *New York Indep. Sys. Operator, Inc.*, Proposed Tariff Revisions Regarding Establishment of Participation Model for Aggregations of Resources, Including Distributed Energy Resources, and Proposed Effective Dates, Docket No. ER19-2276-000 (Jun 27, 2019) ("2019 DER and Aggregation Filing").

<sup>5</sup> *New York Indep. Sys. Operator, Inc.*, Order Accepting Tariff Revisions and Directing Compliance Filing and Informational Report, 170 FERC ¶ 61,033 (2020) ("2020 DER Order").

<sup>6</sup> June 1 Filing at 2.

<sup>7</sup> *Id.* at 22.

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

<sup>9</sup> *New York Indep. Sys. Operator, Inc.*, Docket No. ER23-2040-000, *et al.*, at 1, 4 (Jul. 18, 2023) (unpublished letter order) ("First Deficiency Letter"). Note that the First Deficiency Letter advised the NYISO that its response "must include at least one tariff record to restart the statutory timeframe for Commission action." *Id.* at 4 n.11. The NYISO's response to the First Deficiency Letter complied with OEMR's directive.

<sup>10</sup> *New York Indep. Sys. Operator, Inc.*, Response to Deficiency Letter, Docket No. ER23-2040-001 (Aug. 17, 2023) ("First Deficiency Response"). The First Deficiency Response requested a Commission Order on the June 1 Filing within sixty days, *i.e.*, by October 16, 2023. *See id.* at 1.

questions contained in this response should be evaluated in conjunction with the NYISO's responses to the First Deficiency Letter.

As explained in the First Deficiency Response, the NYISO's minimum capability proposal was based on reasonable expectations related to the organizational effort required to administer its DER and Aggregation participation model effectively and efficiently. The NYISO explained that it already has experience administering wholesale market participation of very small resources (*e.g.*, apartments and other residential locations) in its Special Case Resource ("SCR") program and Emergency Demand Response Program ("EDRP"). Administering those programs includes a significant amount of manual work to enroll, manage, and track performance of small Demand Side Resources, which can exceed the work necessary for traditional Demand Side Resources (*e.g.*, commercial buildings and industrial facilities). For example, very small resources require extra NYISO staff effort to develop, review, and approve enrollment data for thousands of very small facilities that participate as part of a Small Customer Aggregation in the SCR program. The NYISO's proposed 10 kW minimum capability requirement is based, in part, on its two decades of experience administering New York's wholesale Energy, Ancillary Services, and Installed Capacity markets.

The First Deficiency Response also updated the Commission on the NYISO's progress toward implementing the DER and Aggregation participation model.<sup>11</sup> That filing advised the Commission that the software and related applications necessary to implement the DER and Aggregation participation model were expected to be completed by September 1, 2023, with implementation of the participation model shortly thereafter.<sup>12</sup> On September 29, 2023, the NYISO submitted a two-week "Notice of Effective Date" (consistent with its commitment in the June 1 Filing) ("September 29 Filing"). The September 29 Filing advised the Commission that the NYISO intended to make the tariff revisions proposed in this docket effective as of October 19, 2023, which was three days after the expiration of the FPA's standard 60-day notice period on October 16, 2023.<sup>13</sup> The Commission did not issue an Order on or before October 16, 2023.

c. Implementation of the DER and Aggregation Participation Model

As of October 19, 2023, the NYISO has completed all software applications and ISO Procedures necessary to administer its DER and Aggregation participation model. The NYISO is ready to implement that model immediately upon Commission acceptance of the tariff revisions proposed in this proceeding.

The DER and Aggregation-specific software applications are developed, tested, and deployed, and enhancements to related NYISO applications have also been completed. The NYISO must only provide authorized Market Participants with access to the appropriate applications to initiate the participation model.

The NYISO has also completed work with its stakeholder community to prepare a new Aggregation Manual describing the procedures and requirements applicable to DER and

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<sup>11</sup> *See id.* at 1-2.

<sup>12</sup> *See id.*

<sup>13</sup> *New York Indep. Sys. Operator, Inc.*, Notice Establishing an Effective Date for the Distributed Energy Resource and Aggregation Participation Model, Docket No. ER23-2040-000, *et al.* (Sept. 29, 2023).

Aggregations and has revised twelve additional Business Practice Manuals to reflect the 2019 and 2023 tariff revisions comprising the DER and Aggregation participation model. All thirteen Business Practice Manuals have been subject to extensive review by the NYISO's stakeholders, and the final drafts reflect incorporation of stakeholder feedback. Each Manual has been approved by the NYISO BIC and/or Operating Committee and is ready to be posted to the NYISO's public website upon Commission acceptance of the June 1 Filing.

Similarly, the NYISO has developed or modified six Users Guides that explain how Market Participants can and should utilize the new and revised software capabilities to enroll and manage their DER and Aggregations. These six Users Guides are complete and will be made available to Market Participants upon Commission acceptance of the June 1 Filing.<sup>14</sup>

To assist Market Participants seeking to register as Aggregators and enroll DER and Aggregations, the NYISO has developed a comprehensive set of over twenty DER and Aggregation participation model training modules. These materials were developed consistent with the complete set of market rules proposed in 2019 and 2023.

All of this is to say that, as of the date of this filing, the NYISO's first-of-its-kind DER and Aggregation participation model is ready to be implemented, and the NYISO will open its markets to DER and Aggregations as soon as the accompanying tariff records are able to be made effective. In fact, there are currently seven entities that have submitted Aggregator registration materials, and three have successfully completed the full registration process. The NYISO stands ready to grant those three entities the appropriate market access and privileges of an Aggregator as soon as the Commission accepts the June 1 Filing. These three entities (and any others that complete the registration process in the interim) will be permitted to begin enrolling DER as of April 16, 2024, provided the Commission accepts the June 1 Filing within 60 days of this response to the Second Deficiency Letter.

d. The June 1 Filing is Just, Reasonable, and not Unduly Discriminatory

For the reasons described throughout this proceeding, the NYISO reiterates its request that the Commission accept the market rule enhancements proposed in the June 1 Filing as just, reasonable, and not unduly discriminatory. They enable the NYISO to open the wholesale Energy, Ancillary Services, and Installed Capacity markets it operates to DER and Aggregations as soon as the Commission authorizes it to do so.

The NYISO proposed the 10 kW minimum capability requirement after assessing multiple approaches to addressing the challenges of including the smallest resources, and the timing and cost impacts of their inclusion. The NYISO concluded that it was not feasible to develop a model that included sub-10 kW resources on an acceptable timeline or at a reasonable cost. As the NYISO explained in its First Deficiency Response, enabling participation of individual DER with less than 10 kW of capability will require revising existing and/or drafting new market rules, developing additional software and tools, and devotion of substantial additional NYISO resources.<sup>15</sup> These solutions will increase costs for New York electric consumers. The NYISO does not have the staff, processes, and software in place that will allow

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<sup>14</sup> One additional Users Guide that includes material related to the DER and Aggregation participation model is currently being revised and is expected to be completed by April 16, 2024.

<sup>15</sup> First Deficiency Response at 13-14.

it to meet tariff-imposed deadlines and Market Participant expectations for timely review and approval of DER and Aggregations or the ongoing requirements once a DER is participating in an Aggregation if hundreds, or more than a thousand, very small, individual DER enroll in the NYISO markets. These concerns, combined with the near-term infeasibility of other solutions, led to the NYISO's decision to propose the minimum capability requirement for DER.

In developing its 10 kW proposal, the NYISO considered the fact that it has an established, robust program through which very small resources can participate in the NYISO's markets. The NYISO had 6,475 individual facilities sized between 1 and 9 kW participating in its markets as of July 2023, which facilities contributed a total of 7.3 MW of capability. Clearly, there is already an opportunity for small resources to participate in the NYISO-administered wholesale markets. Considering the opportunity presented to small facilities through the SCR program, and opportunities for those facilities through New York State and/or utility-operated programs, the Commission should consider whether requiring facilities less than 10 kW to participate in the NYISO's DER and Aggregation participation model meaningfully improves the opportunities for small resource participation, and whether that opportunity justifies delaying the implementation of the participation model for all other resources.

The June 1 Filing proposed a set of over a dozen tariff revisions that will enhance the NYISO's DER and Aggregation participation model. These enhancements are necessary for the administration of that model, and the software the NYISO has already designed, tested, and deployed includes the features necessary to implement those market rules. The questions posed in the First and Second Deficiency Letters suggest that the Commission may be concerned about the proposed 10 kW minimum capability requirement and may have preferred the NYISO to develop one or more alternatives to its proposal. However, the Commission is "limited to considering the filing before it,"<sup>16</sup> and federal courts have articulated that "[w]hen acting on a public utility's rate filing under section 205, the Commission undertakes 'an essentially passive and reactive role' and restricts itself to evaluating the confined proposal."<sup>17</sup> Courts have also acknowledged that "FERC has interpreted its authority to review rates under [the FPA] as limited to an inquiry into whether the rates proposed by a utility are just and reasonable—and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."<sup>18</sup> Therefore, the NYISO respectfully asks that the Commission limit its consideration to whether the tariff revisions proposed in the June 1 Filing, taken as a whole, are just, reasonable, and not unduly discriminatory, and not on whether hypothetical alternatives to the June 1 Filing might be preferable.

The proposed 10 kW minimum capability requirement that is the subject of the Second Deficiency Letter is a necessary component of the NYISO's June 1 Filing and its DER and Aggregation participation model as a whole. If the Commission determines that the proposed 10 kW minimum capability requirement is not just and reasonable, the NYISO cannot implement the remainder of the June 1 Filing or its DER and Aggregation participation model. In the event that the Commission determines it retains the authority under FPA Section 205 to modify the

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<sup>16</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at P 48 (2018).

<sup>17</sup> *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017) (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 875-76 (D.C. Cir. 1984)).

<sup>18</sup> *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

proposed 10 kW minimum capability requirement (a point which the NYISO does not concede), the NYISO does not consent to the Commission modifying that proposal, or to the Commission accepting the June 1 Filing without the inclusion of the 10 kW minimum capability requirement.<sup>19</sup>

If the Commission rejects the NYISO's June 1 Filing, the NYISO will be unable to integrate DER and Aggregations in its Energy, Ancillary Services, and Installed Capacity markets in the near term. Accordingly, the tariff revisions proposed and accepted in ER19-2276-000, *et al.*, will remain accepted, but not effective.<sup>20</sup> As it has previously advised the Commission, if the June 1 Filing is accepted the NYISO will make the tariff revisions proposed and accepted in Docket No. ER19-2276-000, *et al.*, effective on the same date as the tariff revisions proposed in this proceeding.

e. Impact of Commission Rejection of the June 1 Filing

If the Commission were to reject the June 1 Filing, DER and Aggregation participation in the NYISO-administered Energy, Ancillary Services, and Installed Capacity markets will be delayed and the NYISO will have to undertake a significant multi-year process to develop new market rules that address the NYISO's concerns.

If the June 1 Filing is not accepted, the NYISO will not be able to implement any aspect of its DER and Aggregation participation model because (i) the NYISO does not have the processes and resources to manage thousands of individual DER with a capability of less than 10 kW within the timelines established in Docket No. ER19-2276-000, *et al.*,<sup>21</sup> and (ii) the deployed (but not yet activated) software is designed to implement the market rules contained in the June 1 Filing which are not easily severable from the software designed to implement the market rules accepted by the Commission in 2020. Depending on the directives included in the Commission's Order on the June 1 Filing, the NYISO will have to reevaluate its DER and Aggregation participation model to address the concerns it raised throughout this proceeding. This includes issues related to Distribution Utility/Transmission Owner coordination procedures, DER enrollment requirements, metering and telemetry requirements, performance measurement and auditing, and Aggregation composition requirements. Once appropriate market design and

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<sup>19</sup> See *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017) (holding that the Commission may not modify a rate filing made under FPA Section 205 when it results in "an entirely different rate design," or require minor deviations from a utility's proposal without the utility's consent).

<sup>20</sup> The tariff revisions proposed in the 2019 DER and Aggregation Filing were submitted pursuant to FPA Section 205 and requested a flexible effective date of no earlier than October 1, 2021, for the DER and Aggregation market rules. *2019 DER and Aggregation Filing* at 1, 110. The 2020 DER Order accepted the NYISO's proposed flexible effective date but directed the NYISO to submit a compliance filing proposing revised effective dates reflecting a firm date. *2020 DER Order* at PP 34-35. The NYISO's compliance filing explained that it was not able to propose a firm effective date at that time due to the ongoing development of required software and restated its proposal to submit a compliance filing at least two weeks prior to the firm effective date. *New York Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER19-2276-000, *et al.*, at 5 (Feb. 24, 2020). The Commission accepted the NYISO's flexible effective date with two-week notice proposal in a subsequent Order. See *New York Indep. Sys. Operator, Inc.*, Docket No. ER19-2276-000, *et al.* at 2 (Apr. 21, 2020) (unpublished letter order).

<sup>21</sup> 2019 DER and Aggregation Filing at 27; Accepted Services Tariff Sec. 4.1.10.3.

rule changes have been identified, the NYISO will evaluate how to modify the software to accommodate those changes.

The NYISO also notes that rejection of the June 1 Filing will delay the transition of over 400 MW of Demand Side Ancillary Services Program (“DSASP”) capability to the DER and Aggregation participation model.<sup>22</sup> When effective, the DER and Aggregation participation model will offer existing DSASP and DADRP Resources the opportunity to qualify to receive payments for Energy, Ancillary Services, and capacity as part of a single, streamlined participation model. At this time, existing DSASP Resources are close to hitting a 200 MW cap on direct telemetry communication with the NYISO control room.<sup>23</sup> Once the cap is reached, new DSASP Resource participation and uprates to existing DSASP Resources will not be permitted unless those facilities are able to establish required telemetry connections to the applicable Transmission Owner. Implementation of the DER and Aggregation participation model will eliminate the need for the 200 MW direct communications cap.

f. Future DER and Aggregation Market Design Enhancement Opportunities

The NYISO is committed to evaluating its DER and Aggregation participation model going forward, just as it does in other market areas. Experience administering the DER and Aggregation participation model with individual facilities as small as 10 kW will provide the NYISO essential data on the feasibility of reducing the minimum capability even further that, when combined with the NYISO’s administration of Small Customer Aggregations in the SCR program, will inform future market rule enhancements. Commission acceptance of the June 1 Filing will enable the NYISO to begin gaining that experience as soon as April 16, 2024.

**II. Responses to Questions Posed in the Second Deficiency Letter**

**Commission Questions 1.a and 1.b<sup>24</sup>**

In response to question 3 in the July 17, 2023 deficiency letter, asking why NYISO proposes a 10 kW threshold specifically, NYISO explains that it discussed the potential benefits and costs of various minimum size requirements from zero kW to 100 kW and decided that 10 kW is a reasonable minimum DER size. NYISO explains that its decision-making process was informed by participation in its existing Emergency Demand Response Program (EDRP) and Special Case Resource (SCR) program, which NYISO asserts are “the NYISO participation models closest in kind to the DER and Aggregation model.” NYISO states that it analyzed EDRP and SCR enrollments as of July 1, 2022, grouping individual resources by size and summing the capability of all resources within each group.

a. *Please explain why NYISO’s reliance on historical participation in existing demand*

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<sup>22</sup> As proposed in the June 1 Filing and described in subsequent submissions in this docket, the NYISO will terminate the DSASP and the Day-Ahead Demand Response Program after the DER and Aggregation participation model becomes effective. June 1 Filing at 33-35. *See also* September 29 Filing at 2-3.

<sup>23</sup> *See* Ancillary Services Manual Sec. 6.2.3.9 (“[t]he NYISO has established a [New York Control Area]-wide limit of 200 MW for DSASP Resources using Direct Communications in order to limit the exposure of the amount of Operating Reserves that is not under Transmission Owner control during Interim Control Operations.”).

<sup>24</sup> Internal citations included with the Second Deficiency Letter have been omitted in this response.

*response programs is an appropriate comparison to future participation in the DER and Aggregation participation model given not just the differences between programs, but also the expected changes to the resource mix and demand. As NYISO states in its transmittal, the DER and Aggregation participation model accepted in a January 23, 2020 order will remove barriers to entry and enhance opportunities for facilities that cannot currently participate or cannot fully participate using existing participation models. Did NYISO analyze the impact of the proposed 10 kW minimum capability requirement using NYISO's projections for DER and load growth, such as those outlined in NYISO's 2023 Load and Capacity Data Report? If so, please provide the additional analysis.*

### **NYISO Response**

#### *i. Demand Side Resource Participation as a proxy for DER penetration*

As explained in the First Deficiency Response, the EDRP and SCR program are the NYISO participation models closest in kind to the proposed DER and Aggregation participation model.<sup>25</sup> The EDRP and SCR program are similar to the proposed DER and Aggregation participation model in that they allow small facility participation (with both programs allowing participation of individual Demand Side Resources with as little as 1 kW of Demand Reduction capability (and below 1 kW when participating as part of a Small Customer Aggregation)) and they allow a Market Participant (*i.e.*, a Curtailment Service Provider in the EDRP, and a Responsible Interface Party in the SCR program) to aggregate individual Demand Side Resources as a single "Resource" for the purposes of meeting minimum offer requirements and performance standards. Analysis of the EDRP and SCR program allowed the NYISO to evaluate the potential administrative impact of integrating small DER (*i.e.*, those with a capability less than 10 kW) through its real-world experience administering the EDRP and SCR program. The NYISO does not have a participation model that more closely resembles its DER and Aggregation participation model.

The NYISO also notes that there is significant uncertainty regarding DER penetration. The NYISO anticipates that DER penetration will depend on, among other things, (i) currently unknown and changing costs (such as Aggregator fees, metering and telemetry costs, and lost opportunity costs<sup>26</sup>), (ii) non-wholesale market revenues and incentives (such as participation in utility-operated DER markets/programs and state/federal tax incentives), (iii) the NYISO's market rules, and (iv) wholesale prices for Energy, Ancillary Services and capacity.

Evaluating the administrative challenges faced, in the context of the contribution existing small Demand Side Resources provide to total system capability, is reasonable, appropriate, and the best proxy available to consider the known and unknown factors that are expected to influence future DER penetration.

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<sup>25</sup> First Deficiency Response at 14.

<sup>26</sup> For example, the price at which homeowners will accept daily or hourly cycling of HVAC systems, hot water systems, and other controllable load to help its Aggregation meet NYISO-issued Base Point Signals.

The NYISO's proposed 10 kW minimum DER size requirement was the result of extensive internal deliberation on how to most effectively and efficiently administer its DER and Aggregation model.<sup>27</sup> Over the last six years the NYISO has worked intensively to develop and deliver a DER and Aggregation participation model that encourages new resource integration in a manner that (i) helps maintain reliability, (ii) improves New York State's competitive wholesale electric markets, and (iii) minimizes costs for consumers. Enrollment of a high volume of DER under the NYISO's current market design (and without the 10 kW minimum) will likely become unmanageable and threaten the near-term viability of the DER and Aggregation participation model.

As described in the First Deficiency Response and supported in the Affidavit of Robert Pike, the NYISO's Distributed Resources Operation department, in conjunction with other NYISO staff, examined multiple options to balance the potential benefits of wholesale market access with the NYISO's ability to effectively and efficiently administer its DER and Aggregation participation model, including a new suite of market rules for small DER, development of new software and automation features, and establishment of the 10 kW minimum capability requirement.<sup>28</sup> Each potential solution had its drawbacks.<sup>29</sup> The NYISO's 10 kW minimum capability requirement is a just, reasonable, and efficient method to address its administrative concerns and begin DER and Aggregation integration as soon as the Commission accepts the June 1 Filing.

The fact that the NYISO identified other options to achieve its desired result does not make the NYISO's chosen market rules defective. It is well established that FPA Section 205 does not require the NYISO or the Commission to "choose the best solution, only a reasonable one,"<sup>30</sup> and that different versions of market rules may simultaneously be just, reasonable, and not unduly discriminatory.<sup>31</sup> Nor does the presence of potential alternative market designs require the Commission to reject the NYISO's 10 kW minimum capability requirement. In these situations, the Commission's "statutory role when considering a filing under section 205 of the FPA does not permit the perfect to be the enemy of the good" and potential imperfections do not prohibit the Commission from finding a Section 205 filing to be just, reasonable, and not unduly discriminatory.<sup>32</sup>

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<sup>27</sup> First Deficiency Response at 13.

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

<sup>29</sup> *See id.*

<sup>30</sup> *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007).

<sup>31</sup> *See, e.g., Me. Pub. Utils. Comm'n v. FERC*, 520 F.3d 464, 470-71 (D.C. Cir. 2008) ("[T]here is not a single 'just and reasonable rate' but rather a zone of rates that are just and reasonable; a just and reasonable rate is one that falls within that zone."), *rev'd in part on other grounds sub nom. NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165 (2010).

<sup>32</sup> Statement of Chairman Glick and Commissioner Clements, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000 at P 4 (Oct. 19, 2021) (writing in support of PJM Interconnection's Focused Minimum Offer Price Rule ("MOPR") that "certain aspects of the Focused MOPR strike us as unnecessary and are not the choices we would have made. But our statutory role when considering a filing under section 205 of the FPA does not permit the

ii. *Analysis of the Impact of 10 kW Minimum Capability Requirement Using NYISO Projections for DER and Load Growth*

The NYISO did not analyze the impact of the proposed 10 kW minimum capability requirement using its projections for DER and load growth. The NYISO's 2023 Load and Capacity Data Report ("2023 Gold Book") did not contain projections for wholesale market DER participation,<sup>33</sup> but instead evaluated available distributed generation data to inform and forecast penetration of behind-the-meter distributed generation on New York's distribution systems.<sup>34</sup> The NYISO's 2023 Gold Book forecast presented all forecast DER installations as behind-the-meter due to a lack of firm commitments of future participation in the NYISO-administered wholesale markets. Behind-the-meter distributed generation data helps the NYISO develop short- and long-term Load forecasts that appropriately account for distribution system load modification. The NYISO expects that a portion of these installations may ultimately participate as suppliers in the NYISO-administered markets as market conditions evolve.

- b. *NYISO explains that, based on its analysis of the EDRP and SCR enrollments as of July 1, 2022, resources with a capability below 10 kW have not meaningfully contributed to total New York Control Area capacity. Please explain NYISO's assessment of the expected impact of the proposed 10 kW threshold on distributed energy resource participation. If available, please provide any relevant quantitative analysis that NYISO developed as part of that determination.*

**NYISO Response**

The NYISO expects that residential facilities intending to utilize either demand reduction capability (via controllable smart home products and demand reducing energy storage technology) and/or rooftop solar will experience the primary impact of its proposed 10 kW minimum DER capability requirement.

The NYISO did not develop a quantitative analysis of the expected number of impacted facilities nor the amount of impacted kW attributable to the proposed rule. Any such analysis would have been based on supposition. The NYISO has reviewed data on demand response facilities (both those participating in the NYISO's wholesale programs and those participating in utility-operated programs), the types and quantities of installed distributed generation, and its projections of distributed generation growth.

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perfect to be the enemy of the good and those imperfections do not preclude us from concluding that the Focused MOPR is a just and reasonable rate.”).

<sup>33</sup> *New York Indep. Sys. Operator, Inc.*, 2023 Load & Capacity Data Report at 11 (Apr. 2023), available at: <https://www.nyiso.com/documents/20142/2226333/2023-Gold-Book-Public.pdf/> (“Table I-10a reports the forecast of installed nameplate capacity of [behind-the-meter] non-solar distributed generation. These resources include combined heat and power, anaerobic digesters, fuel cell facilities, small wind, and others. Table I-10a makes no projection of future participation of [behind-the-meter] distributed generation resource in the wholesale distributed energy resources market.”).

<sup>34</sup> *Id.* at 2-3 (“The NYISO employs a multi-stage process to develop load forecasts for each of the eleven Zones within the [New York Control Area].... In the second stage, the incremental impacts of additional policy-driven energy efficiency, [behind-the-meter] solar PV, and distributed generation are deducted from the forecast.”).

Any quantitative analysis of these facilities must proceed on the assumption that they would both qualify for wholesale market participation (in the absence of the 10 kW minimum) and choose to participate in the NYISO's DER and Aggregation participation model. For example, the NYISO's Demand Forecasting and Analysis team uses New York State's Standardized Interconnection Requirements database to inform and forecast behind-the-meter resource penetration for the Gold Book. That database reports a total of 172,434 solar photovoltaic installations in New York State that have less than 10 kW nameplate capacity. However, it is highly unlikely that most of those facilities would qualify to provide services as part of an Aggregation due to applicable metering requirements (DER utilizing solar energy as their fuel need to be directly metered) and/or technological capability (non-dispatchable on its own).

Moreover, it's not clear to the NYISO that facilities that technically qualify to provide services would choose to participate in the DER and Aggregation participation model. On top of the factors influencing participation identified in the NYISO's response to Question 1(a), there are multiple alternative participation opportunities for small facilities. For example, small facilities able to control their demand may choose instead to participate in the NYISO's SCR program (in which they are eligible to receive ICAP market revenues and Energy market payments with lower participation requirements, and at a lower cost of entry) and/or utility demand response programs. Small distributed generation may choose to participate in New York's Value of DER program, which compensates DER for energy, capacity, environmental attributes, demand reductions, locational system relief, and community credits.

Small facilities currently play a role in balancing New York's electric system, and it is expected that they will continue to do so in the future. The question is whether the delayed implementation and costs associated with building the infrastructure to enable sub-10 kW resource participation *in the DER and Aggregation participation model* is justifiable in light of their expected contribution to the bulk electric system.

### **III. Requested Effective Date**

In accordance with Section 205(d) of the Federal Power Act,<sup>35</sup> the Commission's guidance,<sup>36</sup> and the Second Deficiency Letter,<sup>37</sup> the NYISO submits with this filing (i) a clean version of the Services Tariff revisions proposed in this proceeding (Attachment II) and (ii) a clean version of the OATT revisions proposed in this proceeding (Attachment III). Attachments II and III are a complete clean set of Services Tariff and OATT revisions submitted in this proceeding that are necessary to implement the DER and Aggregation participation model and are affixed with an effective date of April 16, 2024.

The NYISO respectfully requests that the Commission issue an order accepting the tariff revisions proposed in the June 1 Filing within sixty (60) days of the date of this response, *i.e.*, by

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<sup>35</sup> 16 U.S.C § 824d (2023).

<sup>36</sup> *Notice of Procedures for Making Statutory Filings when Authorization for New or Revised Tariff Provisions is Not Required*, Docket No. RM01-5, at 3-5 (June 3, 2020).

<sup>37</sup> Second Deficiency Letter at 2 n.6.

Monday, April 15, 2024, consistent with the FPA's statutory notice period and Commission Rule 2007.<sup>38</sup>

As explained in the June 1 Filing, the NYISO plans to make the revisions proposed in this Docket No. ER23-2040-000 effective simultaneously with the tariff revisions proposed and accepted in Docket No. ER19-2276-000, *et al.*<sup>39</sup> Provided the Commission does not reject or require material revisions to the June 1 Filing, the NYISO will submit the applicable tariff records in Docket No. ER19-2276-000, *et al.*, within two business days of the actual effective date. Should the Commission reject the June 1 Filing, the NYISO will not be able to make the tariff revisions proposed and accepted in Docket No. ER19-2276-000, *et al.*, effective.

#### **IV. Service**

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York State Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

#### **V. Conclusion**

The NYISO respectfully requests that the Commission (i) accept this response to the Second Deficiency Letter, (ii) accept the NYISO's June 1 Filing, including the proposed tariff revisions, without modification, and (iii) act on the NYISO's proposed tariff revisions by April 15, 2024.

Respectfully submitted,

/s/ Gregory James Campbell

Gregory James Campbell, Senior Attorney  
New York Independent System Operator, Inc.

cc: Janel Burdick                      Jaime Knepper  
Emily Chen                          Kurt Longo  
Matthew Christiansen      David Morenoff  
Jignasa Gadani                  Douglas Roe  
Jette Gebhart                      Eric Vandenberg  
Leanne Khammal

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<sup>38</sup> 18 C.F.R. § 285.2007(a)(2) ("The last day of any time period is included in the time period, unless it is a Saturday .... In each case the period does not end until the close of the Commission business on the next day which is not a Saturday ....").

<sup>39</sup> June 1 Filing at 22-23.

## **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 13<sup>th</sup> day of February 2024.

/s/ Elizabeth Rilling

Elizabeth Rilling  
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