UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	)))	**Docket No. ER23-2040-005**

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the New York Independent System Operator, Inc. ("NYISO") respectfully submits this Request for Leave to Answer and Answer ("Answer") in response to the comments of Advanced Energy United ("AEU")[2] regarding the NYISO's Informational Report submitted on April 15, 2026, in this proceeding ("Informational Report").[3] As described below, the Commission should accept the NYISO's Informational Report and should reject AEU's request to direct modifications to the NYISO's tariffs.

I. REQUEST FOR LEAVE TO ANSWER

While the NYISO may answer pleadings that are styled as comments as a matter of right,[4] Rule 213 of the Commission's Rules of Practice and Procedure generally prohibits answers to certain pleadings, including protests.[5] If the Commission were to determine that

[1] 18 C.F.R. §§ 385.212 and 385.213.

[2] *New York Independent System Operator, Inc*., Comments of Advanced Energy United, Docket No. ER23-2040-005 (May 6, 2026) ("AEU Comments"). The NYISO has sought to limit the scope of this Answer to address certain key issues. The Commission should not construe the NYISO's silence as to any assertion or argument by AEU as agreement or acquiescence.

[3] *New York Independent System Operator, Inc*., Informational Report, Docket No. ER23-2040-005 (Apr. 15, 2026) ("Informational Report").

[4] *See* 18 C.F.R. § 385.213(a)(3).

[5] 18 C.F.R. § 385.213(a)(2).

AEU's comments are a protest, the Commission has discretion to accept, and routinely accepts, answers to protests where they help clarify complex issues, provide additional information, are helpful to the development of the record in a proceeding, or otherwise assist in the decision-making process.[6]

This Answer clarifies matters in dispute, provides information that will assist the Commission, and is helpful to the development of a complete record in this proceeding. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

II. ANSWER

As detailed in the Informational Report, on June 1, 2023, the NYISO filed proposed revisions to its Open Access Transmission Tariff ("OATT") and its Market Administration and Control Area Services Tariff ("Services Tariff") pursuant to Section 205 of the Federal Power Act ("FPA") ("June 2023 Filing").[7] The proposed tariff revisions clarified and enhanced the market rules that altogether constitute its Distributed Energy Resource ("DER")[8] and Aggregation

[6] *See, e.g., New York Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058, at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,160, at P 13 (2012); and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217, at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process); *Northwestern Corp.*, 179 FERC ¶ 61,131, at P 13 and n.13 (2022) ("Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, we will accept Northwestern's and the Businesses' answers because they provide information that has assisted in our decision-making.") (citing 18 C.F.R. § 385.213(a)(2)); *Tenn. Gas Pipeline Co., LLC*, 178 FERC ¶ 61,119, at P 20 (2022) ("Although the Commission's Rules of Practice and Procedure do not permit answers to protests and answers to answers, we will accept the Applicants' and Municipals' answers because they provide information that has assisted in our decision-making.") (citing 18 C.F.R. § 385.213(a)(2)); *New Fortress Energy LLC*, 174 FERC ¶ 61,207, at P 7 ("The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers; however, we find good cause to waive our rules and accept the answers because they provide information that has assisted in our decision-making process.") (citing 18 C.F.R. § 385.213(a)(2)).

[7] *New York Independent System Operator, Inc*., Proposed Tariff Revisions Regarding the Participation of Distributed Energy Resources and Aggregations, Docket No. ER23-2040 (Jun. 1, 2023) ("June 2023 Filing").

[8] Capitalized terms not otherwise defined in this submission shall have the meaning specified in the NYISO's Open Access Transmission Tariff ("OATT") or the Market Administration and Control Area Services Tariff ("Services Tariff").

participation model ("DER Participation Model").[9] The proposed tariff revisions included a minimum capability requirement of 10 kW for individual Resources participating in an Aggregation as a component of its DER Participation Model.[10] On April 15, 2024, the Commission accepted the NYISO's tariff revisions proposed in its June 2023 Filing and explicitly determined that the proposed 10 kW minimum capability requirement is just and reasonable ("April 2024 Order").[11] Further, the Commission expressly recognized that the NYISO's 10 kW minimum capability requirement was not a temporary measure.[12] However, in light of the NYISO's commitment to continue evaluating the feasibility of reducing the minimum capability requirement for purposes of informing future market reforms, the Commission directed the NYISO to submit an informational filing on the topic in two years' time.[13]

Accordingly, on April 15, 2026, the NYISO submitted the required Informational Report in compliance with the Commission's directive. In response, AEU submitted comments that seek to relitigate issues that the Commission ruled on in April 2024 without introducing any new data

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[9] As further detailed in the NYISO's Informational Report, on June 27, 2019, the NYISO filed comprehensive revisions to its tariff to establish a new participation model for Aggregations of Resources, specifically DERs. *New York Independent System Operator, Inc*., Proposed Tariff Revisions Regarding Establishment of Participation Model for Aggregations of Resources, including Distributed Energy Resources, Docket No. ER19-2276 (Jun. 27, 2019). The proposed revisions established the mechanism by which the Aggregations and DER could participate in the NYISO-administered Energy, Ancillary Services, and Installed Capacity markets ("DER Participation Model"). *Id*. The Commission accepted these proposed tariff revisions on January 23, 2020. *New York Independent System Operator, Inc*., Order Accepting Tariff Revisions and Directing Compliance Filing and Informational Report, 170 FERC ¶ 61,033 (Jan. 23, 2020). The tariff records submitted in Docket No. ER19-2276 combined with the tariff revisions accepted by the Commission in Docket No. ER23-2040 comprise the NYISO's DER Participation Model.

[10] *See* June 2023 Filing, *supra* note 7.

[11] *New York Independent System Operator, Inc*., Order Accepting Tariff Revisions, 187 FERC ¶ 61,022 at P 63 (Apr. 15, 2024) ("April 2024 Order") ("We find that the proposed 10 kW minimum capability requirement is just and reasonable and not unduly discriminatory or preferential.")

[12] *Id*. at P 67.

[13] *Id*.

or changed circumstances, and asks the Commission to direct wholesale revisions to the NYISO's DER program. AEU's comments do not demonstrate that the minimum capability requirement is unjust and unreasonable based on the record of this proceeding.

A. The Commission Properly Found That the 10 kW Minimum Capability Requirement is Just and Reasonable in its April 2024 Order and AEU's Comments Do Not Demonstrate That This Finding Should Be Disturbed

The Commission engaged in reasoned decision-making in its April 2024 Order when it found that the NYISO's 10 kW minimum capability requirement proposed in its June 2023 Filing is just and reasonable. The NYISO thoroughly explained the need for the minimum capability requirement in its June 2023 Filing, its responses to two deficiency letters, and its responses to protests and comments in this proceeding.[14] The Commission considered this evidence, along with the protests and comments, and concluded that "given the record in this proceeding, it is reasonable for NYISO to establish a minimum capability requirement that enables NYISO to immediately implement its DER and Aggregation participation model so that DERs 10 kW and larger may participate under the model."[15] The Commission further stated that "small resources under 10 kW will still have opportunities to participate in the EDRP and SCR program, as well as New York State and utility programs for DERs."[16] In addition, the Commission took note in the April 2024 Order of the NYISO's position that it:

> [H]as not ruled out reducing or eliminating the minimum capability requirement, that it is committed to evaluating the capability and use cases of small facility Aggregation, and that experience administering the DER and Aggregation participation model will provide NYISO with essential data on the feasibility of reducing the minimum capability that, when combined with

[14] *See New York Independent System Operator, Inc*., Answer of the NYISO to Comments and Protests, Docket No. ER23-2040 (Jul. 7, 2023); *New York Independent System Operator, Inc*., Response to Deficiency Letter, Docket No. ER23-2040 (Aug. 17, 2023); *New York Independent System Operator, Inc*., Response to Second Deficiency Letter, Docket No. ER23-2040 (Feb. 13, 2024) ("Response to Second Deficiency Letter").

[15] April 2024 Order, *supra* note 11 at P 65.

[16] *Id*.

> NYISO's administration of Small Customer Aggregations in the SCR program, will inform future market rule enhancements.[17]

On this basis, the Commission directed the NYISO to submit an informational filing and provided for the opportunity for comments on such report. As described in the Informational Report and below, the NYISO continues to find based on its experience in implementing its DER Participation Model that its minimum capability requirement is necessary and remains just and reasonable.

Furthermore, AEU seeks through its comments wholesale revisions to the NYISO's tariffs, including revisions that go well beyond addressing the 10 kW minimum capability requirement. In particular, AEU requests that the Commission direct the NYISO to develop a "concrete plan with specific milestones" to revise its tariff requirements, including: (1) "redesign [the NYISO's] enrollment process to reflect the fundamental principle that the Aggregator is the market-facing entity, not the individual DER;"[18] (2) "develop an automated data verification interface with its distribution utilities;"[19] and (3) "develop an expedited enrollment pathway for resources already participating in NYISO's [Emergency Demand Response Program/Special Case Resource] programs that wish to transition to the DER Participation Model."[20]

The Commission should reject AEU's requested relief, which is not available in response to comments on an informational filing and constitutes an end-run around the NYISO's stakeholder process.[21] If AEU wants to propose substantive changes to the NYISO's DER

[17] April 2024 Order, *supra* note 11 at P 67.

[18] AEU Comments, *supra* note 2 at p. 8.

[19] *Id*.

[20] AEU Comments, *supra* note 2 at p. 9.

[21] The Commission has repeatedly discouraged attempts to make "end-runs" around ISO/RTO governance processes by proposing tariff changes that have not had the benefit of stakeholder vetting. *See, e.g., ISO New England Inc.*, 130 FERC ¶ 61,145 at P 34 (2010) ("[W]e encourage parties to participate in the stakeholder process if they seek to change the market rules."); *ISO New England Inc*., 125 FERC ¶ 61,154 at P 39 (2008) (directing that

program, the appropriate forum for AEU to propose these changes is the NYISO's stakeholder process, including the opportunity to raise its proposals for consideration in the 2026 DER Market Enhancements initiative.[22]

The Commission accepted the NYISO's minimum capability requirement, along with the other tariff requirements challenged by AEU, as just and reasonable. AEU's comments do not satisfy the requirements for a complaint challenging the NYISO's tariff requirements pursuant to Section 206 of the FPA and are not an appropriate mechanism for relitigating the justness and reasonableness of the NYISO's tariff requirements.[23] Even if AEU's comments satisfied the procedural requirements for a complaint, AEU has not met its burden of demonstrating that the NYISO's existing tariff requirements are unjust and unreasonable or that AEU's proposed replacement mechanisms are just and reasonable. For the reasons explained above, the relief AEU requested in its comments should be rejected.

AEU's comments claim that "[t]he Commission did not accept the 10 kW threshold as a permanent feature of NYISO's market design."[24] However, the April 2024 Order expressly addressed the expiration of the 10 kW minimum capability requirement stating: "With respect to

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unresolved issues be addressed through the stakeholder process); *ISO New England Inc*., 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party's specific request for relief because the Commission "will not . . . circumvent that stakeholder process"); *N.Y Ind. Sys. Operator, Inc*., 126 FERC ¶ 61,046 at PP 53-54 (2009) (directing that a proposal be "presented to and discussed among . . . stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission"); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants").

[22] *See* NYISO Informational Report, *supra* note 3 at p. 10-11.

[23] The Commission has rejected complaints being included in protests in ongoing proceedings, which do not provide sufficient notice to interested parties. *See e.g. California Indep. Sys. Operator Corp*., 168 FERC ¶ 61,199 at P 102 (2019) (holding that a complaint should not be submitted as part of a motion to protest in an ongoing proceeding because such filing does not allow interested parties sufficient notice of the complaint); *Midcontinent Indep. Sys. Operator, Inc*., 155 FERC ¶ 61,040 at P 18 (citing Commission precedent regarding the necessity of filing a complaint separately from a motion to intervene or protest).

[24] AEU Comments, *supra* note 2 at p. 7.

protesters' arguments that allowing indefinite application of NYISO's 10 kW minimum capability requirement would be arbitrary and capricious and contrary to the requirements of Order No. 2222, we note that, although the Commission declined to require RTOs/ISOs to adopt a minimum capability requirement, [footnote omitted] it did not find that such a requirement would be unjust and unreasonable or unduly discriminatory."[25]

AEU now seeks to raise issues that were already litigated in this proceeding without introducing any new data or changed circumstances.[26] "The Commission's position on relitigation of issues is one where in the absence of new or changed circumstances requiring a different result, 'it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined.'"[27] Further, the Commission has stated that "[c]ollateral attacks on final orders and relitigation of applicable precedent by parties that were active in earlier cases thwart the finality and repose that are essential to administrative (and judicial) efficiency."[28]

In sum, the Commission's finding that the 10 kW minimum capability requirement is just and reasonable in its April 2024 Order should not be disturbed.

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[25] April 2024 Order, *supra* note 11 at P 66.

[26] To illustrate, in AEU's June 22, 2023 Protest and Comments filed in this proceeding, it argued that the minimum capability requirement "is inconsistent with Order No. 2222, because the Commission expressly declined to establish minimum capability requirements for individual DERs to participate in the Aggregation because the Aggregation would act as a single resource and the DER Aggregator would take on the role of the market-facing entity[.]" *New York Independent System Operator, Inc*., Protest and Comments of AEU et al., Docket No. ER23-2040 at 4 (Jun. 22, 2023). In AEU's May 6, 2026 comments, it again argues that "[t]he Commission should direct NYISO to redesign its enrollment process to reflect the fundamental principle [of Order No. 2222] that the Aggregator is the market-facing entity, not the individual DER." AEU Comments, *supra* note 2 at p. 8 (citing Order No. 2222 at P1).

[27] *Alamito Co*., 41 FERC ¶ 61,312, 61829 (1987) (citing *Central Kansas Power Co*., 5 FERC ¶ 61,291 at P 61,621 (1978); *see also BP Pipelines (Alaska) Inc*., 122 FERC ¶ 61,236, 62309 (2008); *CNG Transmission Corp*., 51 FERC ¶ 63,003 at 65,007 (1990).

[28] *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,231, 62558-62559 (2020) (citations omitted).

B. The NYISO's DER and Aggregation Program Administration Represents a Balanced and Just and Reasonable Approach That Achieves the Appropriate Level of Oversight by Ensuring There is No Regulatory Oversight Gap Without Applying Unnecessary Scrutiny to Market Participants

The crux of AEU's comments is that "NYISO has taken on far more administrative responsibility than the aggregation model requires."[29] More specifically, AEU claims that "[w]hat NYISO genuinely needs to know about individual DERs within an aggregation is limited: [1] that no DER is participating in more than one Aggregation simultaneously, and [2] that the Aggregator can perform the services it offers."[30] Unfortunately, several recent civil penalty cases involving aggregation and demand response programs distinctly demonstrate that, if the NYISO limited its program administration duties and provided less review of enrollments as AEU argues, market participant misconduct could place significant amounts of ratepayer dollars and reliability at risk.

In *Ketchup Caddy*, the Commission found that "Respondents' actions in illicitly obtaining customer data and using that data to register and offer uncontracted [Load Modifying Resources (LMRs)] into the [Midcontinent Independent System Operator, Inc. (MISO)] market in exchange for payments for capacity that could not be provided, constituted a fraudulent scheme to defraud."[31] Similarly, in *Voltus*, the Commission's Office of Enforcement concluded that "Voltus

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[29] AEU Comments, *supra* note 2 at p. 5.

[30] AEU Comments, *supra* note 2 at p. 5.

[31] *Ketchup Caddy, LLC*, 189 FERC ¶ 61,176, 62385 (2024). The Commission explained:

> From about May 2018 to March 2019, Respondents worked on creating a tool to scrape and cull customer data from Ameren's website. Mango admitted that, during this period, Respondents knew that they "were not going to be able to get a hold of customers. We were not going to be able to actually talk to them and get them enrolled . . . because there was no way we could get a hold of them and get them to agree to take zero percent and us to take 100 percent. And two, there was no time."

Id.

violated [MISO] Tariff Section 69A.3.5 by registering some LMRs despite not having authority, via ownership or contractual rights, to reduce demand using those LMRs."[32]

AEU's contention that the NYISO's process of "examining one-line diagrams, utility bills, [Dependable Maximum Net Capability (DMNC)] test submissions, and [Economic Customer Baseline Load (ECBL)] audits"[33] is "self-imposed complexity"[34] is unfounded and should be rejected.[35] Rather, the NYISO's program review processes and level of oversight are appropriate to assure the integrity of the DER and Aggregation Participation Model, and to protect ratepayers and reliability.

III. CONCLUSION

For the reasons elucidated above, the NYISO respectfully requests that the Commission accept this Answer, reject the AEU comments and its requested relief, and accept the NYISO's April 15, 2026 Informational Report.

Respectfully submitted,

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[32] *Voltus, Inc*., 190 FERC ¶ 61,008, 61026 (2025).

[33] AEU Comments, *supra* note 2 at p. 5.

[34] *Id*.

[35] AEU argues that the NYISO should limit itself to verifying that the Aggregator can perform the services it offers, however, it is unclear how the NYISO would do so without examining Dependable Maximum Net Capability (DMNC) test submissions. The DMNC demonstrates the sustained maximum net output capabilities of an Aggregation and thus, examination of such is necessary in order to verify that the Aggregator can in fact provide the Capacity it offers.

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 2nd day of June 2026.

/s/ Alexander Morse

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