

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Third-Party Provision of Ancillary Services;)
Accounting and Financial Reporting for)
New Electric Storage Technologies)**

**Docket No. RM11-24-000
Docket No. AD10-13-000**

**COMMENTS OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

I. INTRODUCTION

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits these comments in response to the Notice of Proposed Rulemaking (“NOPR”) issued by the Commission in the above-captioned proceedings on June 22, 2012.¹ These comments express the NYISO’s views on two areas addressed in the NOPR: (A) Ancillary Services Data Posting Requirements, and (B) Resource Speed and Accuracy in Determination of Regulation and Frequency Response Reserve Requirements.

II. COMMENTS

A. The Final Rule Should Clarify That ISOs/RTOs Are Exempt From The Ancillary Services Data Posting Requirements Set Forth In Proposed Section 37.6(k)

Under existing Commission rules, a third-party supplier of ancillary services must provide a market power study in order to sell ancillary services at market-based rates to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers.² In the NOPR, the Commission recognizes commenter

¹ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Notice of Proposed Rulemaking, 139 FERC ¶ 61,245 (2012).

² NOPR at P 11.

concerns that certain information needed to perform such market power studies is not readily available outside of independent system operator (“ISO”) and regional transmission organization (“RTO”) markets.³ The Commission is concerned that the lack of information effectively precludes sales of ancillary services to public utility transmission providers at market-based rates.⁴ To address this issue, the Commission is proposing to amend Section 37.6 of its regulations to add a reporting requirement for Transmission Providers in new paragraph (k) that would provide potential sellers of ancillary services with the information needed to develop market power analyses.⁵

Potential sellers of ancillary services in ISO/RTO regions do not have the same burden as sellers in non-ISO/RTO regions to demonstrate that they lack market power. Instead, if the Commission concludes that an ISO/RTO-administered ancillary services market is competitive, sellers may sell that ancillary service at market-based rates.⁶ As the Commission recognizes in the NOPR, most ISOs/RTOs already have markets that allow for the sale of ancillary services at market-based rates in their regions.⁷ Moreover, the information that sellers would need to conduct their own market power studies is already generally available in ISO/RTO regions. There is thus no need to impose the proposed new Section 37.6(k) reporting requirement on ISOs/RTOs.

³ NOPR at P 16.

⁴ NOPR at P 11.

⁵ NOPR at P 25.

⁶ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n. 1194 and P 1069.

⁷ NOPR at P 12.

The NYISO, therefore, requests that the Commission clarify in the final rule that ISOs/RTOs are exempt from this new reporting requirement. To that end, the NYISO recommends the following change (shown in redline) to proposed Section 37.6(k):

(k) *Posting data related to historical ancillary service requirements.* The Transmission Provider (other than an independent system operator or regional transmission organization) must post on OASIS information as to the aggregate amount (MW or MVAR, as applicable) of Operating Reserve-Spinning, Operating Reserve-Supplemental, Reactive Supply and Voltage Control, and Regulation and Frequency Response services that it has historically required in order to serve its long-term firm obligations, including any geographic limitations it may face in meeting such ancillary service requirements.

B. The Final Rule Should Clarify That ISOs/RTOs Are Exempt From The Requirement In Proposed Section 35.28(c)(1)(viii) To Take Into Account Resource Speed And Accuracy In Determinations of Regulation and Frequency Response Reserve Requirements

In Order No. 755, the Commission directed ISOs/RTOs to revise their tariffs to compensate resources that provide frequency regulation in a manner that reflects resources' performance in order to prevent undue discrimination.⁸

In the NOPR, the Commission seeks to apply a similar concept in the bilateral markets outside of the ISO/RTO regions.⁹ To accomplish this goal, proposed Section 35.28(c)(1)(viii) would require each "public utility transmission provider," including, apparently ISOs/RTOs, to include provisions in its OATT explaining how it will determine regulation and frequency response reserve requirements in a manner that takes into account the speed and accuracy of resources used.¹⁰ The proposed regulation would also require each public utility to include in Schedule 3 of its OATT a description of how the public utility would make adjustments to the

⁸ *Frequency Regulation Compensation in the Organized Wholesale Power Markets*, Order No. 755, FERC Stats. & Regs. ¶ 31,324 (2011), *reh'g denied*, Order No. 755-A, 138 FERC ¶ 61,123 (2012) ("Order No. 755").

⁹ NOPR at PP 47-48.

¹⁰ NOPR at P 51.

reserve requirements when a customer opts to purchase from third-parties or self-supply its requirements using resources with speed and accuracy characteristics that differ from the set otherwise used to provide frequency regulation service.¹¹

The NYISO requests that the Commission clarify in the final rule that ISOs/RTOs, that are implementing the requirements of Order No. 755, are exempt from the new requirement, in proposed Section 35.28(c)(1)(viii). Such an exemption is appropriate given that the purpose of the proposed reform is to prevent undue discrimination by taking into account the speed and accuracy of frequency regulation resources in determining reserve requirements. ISOs/RTOs that are implementing Order No. 755 are pursuing market reforms that will take speed and accuracy of frequency regulation resources into account. These actions are expected to be reflected in future regulation and frequency response requirements. As the Commission recognized in Order No. 755:

[S]ending efficient price signals [as a result of the implementation of Order No. 755 reforms] will remove barriers to the entry of faster-ramping and more accurate frequency regulation resources. This in turn should lead to reductions in the amount of frequency regulation capacity that each balancing area authority needs to procure in order to maintain reliability. As the needed quantity of frequency regulation decreases, the net result should be a reduction in expenditures on frequency regulation, and ultimately a lower cost for consumers.¹²

Thus, the Commission already expects that ISOs/RTOs will see the efficiency gains from the reforms found in Order No 755 reflected in their future frequency regulation requirements. It would be duplicative and needlessly burdensome to require that ISOs/RTOs simultaneously pursue efforts specifically designed for non-ISO/RTO regions, to take frequency regulation

¹¹ *Id.*

¹² Order No. 755 at P 72.

resources speed and accuracy into account. The Commission has acknowledged that ISOs/RTOs' compliance with Order No. 755 is likely to produce the same, or better, results.

In the alternative, the NYISO requests that the Commission narrow the scope of proposed Section 35.28(c)(1)(viii) to exclude those ISOs/RTOs that do not have frequency regulation ancillary services markets that accommodate self-supply of regulation and frequency response service.

As NYISO stated in its August 2011 filing in Docket No. ER11-4257, "physical" self-supply of regulation and frequency response service is not available in the NYISO-administered ancillary services markets.¹³ Specifically, Section 6.3.1 of the NYISO's OATT provides that NYISO customers must purchase regulation service from the NYISO.

As such, the NYISO's reserve requirement will not be affected by customer purchases from third-parties or self-supply of regulation service. There is thus no need to subject the NYISO, or any other similarly situated entity, to the NOPR's requirements on this point. Moreover, the Commission gives no direction in the NOPR on what an ISO / RTO that does not offer a self-supply option for regulation service would do to comply with this provision.

¹³ *New York Independent System Operator, Inc.*, Docket No. ER11-4257-000, Proposed Tariff Clarifications Regarding the Bidding, Scheduling, and Settlement of Ancillary Services (August 8, 2011) at pp. 3-4 (filing accepted by the Commission on September 28, 2011).

III. CONCLUSION

The NYISO requests the Commission to act on the NOPR in a manner consistent with these comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 7th day of September, 2012.

/s/ Ted J. Murphy

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