

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

Energy Spectrum, Inc. and Riverbay Corporation)	
)	
)	
v.)	Docket No. EL12-56-000
)	
New York Independent System Operator, Inc.)	

**ANSWER AND REQUEST FOR EXPEDITED ACTION OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure¹ and the Commission’s April 14, 2012 *Notice of Complaint* in this proceeding, the NYISO respectfully submits this answer to the *Complaint of Energy Spectrum, Inc. and Riverbay Corporation and Request for Fast-Track Processing and Summary Disposition* (“Complaint”).² The NYISO is also addressing the *Motion to Intervene and Comments of Consumer Power Advocates* (“CPA Comments”).³ The Complaint and CPA Comments both make a variety of factually inaccurate and legally invalid claims regarding the NYISO’s Special Case Resources (“SCR”) program and its issuance of “Technical Bulletin 217,” on April 6, 2012.

¹ 18 C.F.R. § 385.213 (2011).

² The NYISO filed a *Preliminary Answer* to the Complaint, which addressed certain procedural issues, on April 13, 2012. The NYISO is not addressing Complainant’s request for summary disposition, because the Complaint should be dismissed on the merits, as described in this answer. *See* Complaint at 16.

³ For the sake of expediency, the NYISO is also responding to the CPA comments in this answer. Because that pleading is styled as comments, the NYISO may answer it as a matter of right. To the extent that the Commission views CPA’s Comments as tantamount to a protest, the NYISO respectfully requests that the Commission exercise its discretion and accept this answer because it corrects certain inaccurate statements in the CPA Comments.

As discussed in detail below in Section II, the Complaint should be dismissed because Technical Bulletin 217: (i) does not revise filed tariff provisions in contravention of the Federal Power (“FPA”), but merely restates and clarifies them in a manner that is fully consistent with both the Market Administration and Control Area Services Tariff (“Services Tariff”) and the *Installed Capacity Manual*; (ii) does not violate any NYISO governance requirements; (iii) will ensure system reliability by preventing behind the meter generation that cannot reduce demand at the direction of the NYISO from enrolling as SCRs and thus qualifying as Installed Capacity Suppliers, through double-counting; and (iv) will not impose legally cognizable “damages” or “harm” on individual market participants or the market as a whole.

In addition, as is discussed below in Section III, the NYISO respectfully asks that the Commission act expeditiously and issue an order no later than May 1, 2012.

I. STATEMENT OF FACTS

This proceeding concerns the administration of the NYISO’s Installed Capacity Special Case Resource program (“SCR Program”). SCRs are Demand Side Resources and certain Local Generators that are eligible to become Installed Capacity Suppliers and sell Unforced Capacity in the NYISO-administered Installed Capacity (“ICAP”) market because they can reduce load from the system at the direction of the NYISO. SCRs receive a capacity payment based upon their capability to provide load reduction relief to the system at the NYISO’s request during certain reliability events. The SCR Program works through the notification by the NYISO to SCRs that their on-system loads should be curtailed for a minimum of four hours in accordance with the amount of capacity that they sold in the NYISO ICAP markets. The load may be curtailed by reducing electricity consumption, through the use of on-site, behind the meter generation that is not regularly

serving load, or by both turning on (or ramping up) a behind the meter generator and reducing electricity consumption for the period of time specified by the NYISO.

The SCR Program contributes to the maintenance of grid reliability by providing system load reductions at the times when they are most needed. The SCR Program is premised on providing compensation for SCRs that can reduce or eliminate load on the NYISO's system on short notice during specific events. If a SCR is not capable of providing demand reduction of system load during such an event, it is not eligible to be an Installed Capacity Supplier.

The Services Tariff has always required that a resource must be able to control its demand at the direction of the NYISO in order to be a SCR. The March 2008 filing implementing the Demand Side Ancillary Services Program ("DSASP Filing") revised the definitions of "Capacity" and "Special Case Resource" but did not alter this paramount requirement for SCRs.⁴ Contrary to Complainants' assertions, the changes made in the DSASP Filing were not inadvertent or unintended. They were fully intentional and appropriate and accurately reflect the full meaning and importance of these terms as they are used throughout the tariff.

The NYISO has never said that resources that are unable to control demand at its direction should be eligible to be SCRs. Complainants' reliance on certain language in NYISO presentations to its stakeholders regarding compensation of SCR generation in excess of host load, is misplaced and does not support their position regarding Technical

⁴ *Compliance Filing Re: Proposed Revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff to Allow Demand Side Resources to Offer Operating Reserves and Regulation Service on Terms Comparable to Generators*, Docket No. ER04-230-023 (filed March 24, 2008) ("DSASP Filing"); see also *New York Independent System Operator, Inc.*, 123 ¶ 61,203 (2008).

Bulletin 217. Technical Bulletin 217 does not address the issue of SCR generation in excess of host load.⁵ None of those presentations indicate that a generator that seeks to enroll as a SCR does not have to meet the requirement that it be able to provide load reduction at the direction of the NYISO.

On February 17, 2011, the NYISO filed tariff modifications adopting the “Average Coincident Load” (“ACL”) and “Provisional ACL” methodologies, which replaced the “Average Peak Monthly Demand” methodology for calculating SCR baselines.⁶ The Commission approved the proposed changes and made them effective on April 11, 2011. The introduction of the ACL and Provisional ACL rules further reinforces the requirement that only resources that can reduce demand at the control of the NYISO may qualify as SCRs. They better align the participation and performance of SCRs with the operational expectations of the NYISO during SCR events by obtaining better estimates of the demand reduction capability (and Installed Capacity) of SCRs that coincides with the peak system load conditions. The ACL tariff provisions require a SCR to be enrolled with forty (40) hours of metered demand that coincides with the NYISO’s

⁵ See, e.g., July 30, 2010 Presentation at 4, *available at* http://www.nyiso.com/public/webdocs/committees/bic_prlwg/meeting_materials/2010-07-30/SCR_Generators_in_Excess_of_Host_Load.pdf (“July 30 2010 Presentation”); January 19, 2011 Presentation at 2, *available at* http://www.nyiso.com/public/webdocs/committees/bic_icapwg/meeting_materials/2011-01-19/SCR_Generators_in_Excess_of_Host_Load.pdf (“January 19, 2011 Presentation”); January 26, 2011 Presentation at 2, *available at* http://www.nyiso.com/public/webdocs/committees/bic_icapwg/meeting_materials/2011-01-24/SCR_Generators_in_Excess_of_Host_Load_0126_BIC_final_012411.pdf (“January, 26 Presentation”); February 8, 2011 Presentation at 2, *available at* http://www.nyiso.com/public/webdocs/committees/bic_icapwg/meeting_materials/2011-02-08/SCR_Generators_in_Excess_of_Host_Load_020811.pdf (“February 8, 2011 Presentation”).

⁶ See *Proposed Tariff Revisions for the Measurement and Performance of Special Case Resources, Aggregations and Responsible Interface Parties*, Docket No. ER11-2906-000 (filed February 17, 2011) (“February Filing”); *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,020 (2011).

top forty load hours from the prior Capability Period. The top twenty (20) of these metered demand values are used to determine the ACL or baseline load used to measure performance by the NYISO for each SCR.

Technical Bulletin 217 does not alter any aspect of the SCR Program. It merely restates and clarifies what is expected of resources that wish to participate in that program by clarifying that the metered demand required for enrollment and used in the ACL baseline calculation must be demand that is taken from the grid. Technical Bulletin 217 was necessary because the NYISO recently received stakeholder questions that led it to believe that, at a minimum, some stakeholders could be misinterpreting the new ACL rules as well as the paramount reliability-driven eligibility requirement for SCRs. The requirement that SCRs be able to respond to NYISO directives to reduce demand has been clearly enumerated in the Services Tariff since the inception of the SCR program.

The NYISO has issued Technical Bulletins for more than a decade, to address and clarify detailed implementation issues in advance of those issues being addressed in the NYISO's manuals. Each Technical Bulletin, including Technical Bulletin 217, states that its purpose "is to facilitate participation in the NYISO by communicating various NYISO concepts, techniques, and processes to Market Participants before they can be formally documented in a NYISO manual." A draft of Technical Bulletin 217 was issued on March 16, 2012 for stakeholder input. Subsequently, the NYISO held two stakeholder meetings to hear and respond to stakeholders' comments and questions. Additional time was provided for written comments and the NYISO issued the final version on April 6, 2012, after reviewing the written comments.

II. ANSWER

A. The Issuance of Technical Bulletin 217 Was Fully Consistent with the FPA Because it in No Way Alters the Filed Services Tariff

Complainants argue that Technical Bulletin 217 makes a “substantial” change to the Services Tariff when it states that “[o]nly load consumed by the SCR that is supplied from the distribution system may be included in” a SCR’s ACL or Provisional ACL, and that such ACL may not include “[o]utput from behind the meter generation consumed by the load” during system peak hours. The reality is that Technical Bulletin 217 is entirely consistent with the NYISO tariff, makes no *de facto* tariff revisions, and simply clarifies existing rules in light of the recent ACL tariff modifications. Complainants have failed to satisfy their burden of proof under Rule 206 and the Complaint should therefore be dismissed.

1. Technical Bulletin 217 Is Consistent with the Existing NYISO Tariffs and the Paramount Reliability Purpose of the SCR Program

As explained above, the purpose of the NYISO’s SCR Program is to give resources an incentive to reduce system load during reliability events. This is evidenced by several provisions in the NYISO’s Services Tariff including the definition of “Capacity” (*i.e.*, “[t]he capability to generate or transmit electrical power, ***or the ability to control demand at the direction of the ISO***, measured in megawatts (‘MW’)”⁷ and the definition of “Special Case Resource” (*i.e.*, “Demand Side Resources capable of being ***interrupted upon demand***, ...”).⁸ These Services Tariff definitions clearly require that SCRs be capable of interrupting load upon demand and provide that SCRs may supply

⁷ Services Tariff § 2.3 (emphasis added).

⁸ Services Tariff § 2.19 (emphasis added).

Capacity only to the extent that they have the ability to reduce demand when the NYISO directs. Importantly, all SCRs are Demand Side Resources and as such, SCR generators are not exempted from this requirement to reduce load in response to a NYISO directive. Additionally, Complainants' reliance on the definitions of Local Generator and ACL fail to support their contentions, as nothing in those definitions exempt SCRs from this requirement.

Further, the NYISO's Services Tariff provisions implementing the SCR Program clearly establish the requirement that a SCR provide system load reduction during reliability events. Specifically, section 5.12.11.1 establishes that during certain defined situations, "Responsible Interface Parties may qualify as Installed Capacity Suppliers, without having to comply with the daily bidding, scheduling, and notification requirements set forth in 5.12.7 of this Tariff, if their Special Case Resources: (i) ***are available to operate for a minimum [number] of consecutive hours each day,⁹ at the direction of the ISO.***"¹⁰ Section 5.12.11.1 further states that the NYISO "shall pay Responsible Interface Parties that, through their Special Case Resources ***caused a verified Load reduction in response to***"¹¹ those identified reliability events.

Accordingly, the Services tariff does not allow a Responsible Interface Party to count a resource that is not capable of reducing system Load at the direction of the

⁹ Either four or two consecutive hours each day, depending on whether the resource is subject to operating limitations established by environmental permits.

¹⁰ Services Tariff § 5.12.11.1 (emphasis added). Specifically, the § 5.12.11.1 "reliability events" are: "(i) an ISO request to perform due to a Forecast Reserve Shortage (ii) an ISO declared Major Emergency State, (iii) an ISO request to perform made in response to a request for assistance for Load relief purposes or as a result of a Local Reliability Rules, or (iv) a test called by the ISO, for such Load reduction, in accordance with ISO Procedures.").

¹¹ Services Tariff § 5.12.11.1 (emphasis added).

NYISO, to qualify as an Installed Capacity Supplier. SCRs that cannot provide the required system load reduction during reliability events do not meet the requirements to participate and this would necessarily include any behind the meter generation that regularly operates to serve its host load. It does not, however, preclude all behind the meter generation from participation. Emergency Generators that can be turned on during a SCR event can enroll and participate as SCRs in accordance with the Services Tariff, and Technical Bulletin 217, because they can effectuate a system load reduction when the NYISO calls upon them. Technical Bulletin 217 explains how that requirement is to be applied to behind the meter generation, in the framework of the ACL and Provisional ACL methodologies.¹² Therefore, the Complainants' assertions that Technical Bulletin 217 is inconsistent with the Services Tariff must be rejected.¹³

2. Because Technical Bulletin 217 Does Not Make Any Change, Let Alone Any “Significant” Change, to Any NYISO Tariff Provision it Did Not Have to Be Filed Under FPA Section 205

Technical Bulletin 217 is not a revision of the NYISO's filed Services Tariff and there was thus no need for it to be submitted to the Commission under section 205 of the FPA. As explained above, contrary to Complainants' assertions,¹⁴ Technical Bulletin 217 did not revise the Services Tariff. It merely restated and clarified what the Services Tariff has always required.

Commission policy and precedent is clear, filed tariffs do not have to include all the rules, standards, and practices relating to transmission or other Commission-jurisdictional services, because “such a requirement would be impractical and potentially

¹² See *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,020 (2011).

¹³ Complaint at 10-13.

¹⁴ Complaint at 9-10.

administratively burdensome.”¹⁵ Instead, the Commission applies the “rule of reason” test which requires only those rules, practices and standards that “significantly affect” such services to be included in a tariff.¹⁶ Under the “rule of reason,” “general operating procedures,”¹⁷ “implementation details,”¹⁸ or “guidelines” that provide customers with information concerning the implementation of tariff rules,¹⁹ do not have to be included in the tariffs.²⁰

Technical Bulletin 217 clarifies a technical implementation detail that is comparable to the kinds of information that the Commission has permitted other ISOs and RTOs to address in non-tariff documents. Specifically, Technical Bulletin 217 was issued to clarify an apparent misunderstanding by certain Responsible Interface Parties

¹⁵ See, e.g., *Southwest Power Pool, Inc.*, 136 FERC ¶ 61,050 at P 33 (2011) (internal citations omitted).

¹⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats & Regs. ¶ 31,241, at PP 1650-1651 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, 129 FERC ¶ 61,126 (2009) (finding that only rules, standards and practices which significantly affect transmission service must be included in a transmission provider's OATT, although they must be posted on the transmission provider's public website); see also *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

¹⁷ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 656 (2004), *order on reh'g* 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043 (2005) (indicating that the rule of reason dictates that the Business Practices Manuals did not have to be filed under section 205, because while the manuals implicated the Commission's jurisdiction they “mostly involve[d] general operating procedures” and therefore no section 205 filing was required).

¹⁸ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283 at PP 398-399 (2008) (finding that “implementation details are fall within the Commission's rule of reason” and do not have to be included in the tariff”).

¹⁹ *California Independent System Operator Corporation*, 122 FERC ¶61,271 (2008) (“It is appropriate for Business Practice Manuals to contain implementation details, such as instructions, guidelines, examples and charts, which guide internal operations and inform market participants of how the CAISO conducts its operations under the MRTU tariff”).

²⁰ See *supra*, n. 16.

regarding the eligibility of certain behind the meter generation and the recently implemented ACL enrollment requirement applicable to these resources.²¹ The NYISO learned that certain Responsible Interface Parties may have believed that it was permissible to enroll resources that were not causing “verified Load reduction in response to” NYISO requests, as SCRs and thus for such resources to sell Installed Capacity. Such a practice would be inconsistent with clear tariff requirements. Reminding Market Participants of this rule does not constitute “changing” any rule.

Complainants’ unsupported declarations that Technical Bulletin 217 has somehow amended the tariff is not correct.²² Therefore, Complainants’ assertion that the contents of Technical Bulletin 217 must be filed as part of the NYISO’s tariff²³ is contrary to the Commission’s rule of reason.

3. Technical Bulletin 217 Is Fully Consistent with the NYISO’s *Installed Capacity Manual*

Commission precedent holds that when a tariff is clear then the plain language of the tariff controls. Extrinsic evidence only needs to be considered if the tariff is ambiguous.²⁴ As explained above, the Services Tariff clearly requires that a SCR must

²¹ The NYISO notes, that in addition to Technical Bulletin 217, a second Technical Bulletin was issued contemporaneously to clarify the treatment of SCR performance factors due to a Market Participant inquiry. The issue came to light, once again, due to the recent implementation of the ACL tariff provisions. Similarly, in response to apparent misunderstandings by Responsible Interface Parties of SCR enrollment under the ACL tariff provisions, the NYISO issued a Technical Bulletin addressing those issues in the Spring of 2011.

²² Complaint at 10-13.

²³ *Id.* at 9-10.

²⁴ *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,032 at P 30 and n. 23 (2010) (stating that “when presented with a dispute concerning the interpretation of a tariff or contract, the Commission looks first to the tariff or contract itself, and only if it cannot discern the meaning of the contract or tariff from the language of the contract or tariff, will it look to extrinsic evidence. Extrinsic evidence (which may include the parties’ course of performance) is

be able to reduce system load at the NYISO's request during certain specified reliability events in order to participate in the SCR Program.

However, in the event the Commission were to conclude that the tariff is ambiguous, the NYISO's *Installed Capacity Manual* provides further evidence that such resources cannot participate in the SCR Program. The *Installed Capacity Manual* strongly supports the NYISO's understanding that the Services Tariff allows only SCRs that provide system load reduction at the request of the NYISO during specified reliability events to participate in the SCR Program.

Section 4.12.2 discusses general requirements applicable to all SCRs. This provision has been in place, without revision, since before the implementation of the DSASP tariff changes. Section 4.12.2 explains earlier protocols that allowed SCR generation to exceed the host load consumed by the SCR. It states that a SCR generator "may specify generation in excess of its facility load, provided that it has installed metering capability satisfactory to the NYISO in order to quantify the net load change during a curtailment." It further explains that a SCR generator which is directly metered must report its effective load reduction after any auxiliary load consumed by the generator itself or load bank (energy consumed only to run the generator) is deducted from the metered generation. Thus, section 4.12.2 clearly contradicts Complainants' assertion that the tariff revisions in the 2008 DSASP Filing that prevent SCR generation from being enrolled in excess of the host load, somehow "inadvertently" prevented the enrollment of behind the meter generation for the first time. It clearly confirms that the

admissible to ascertain the intent of the parties when the intent has been imperfectly expressed in ambiguous contract language, but is not admissible either to contradict or alter express terms").

requirement that performance of all SCRs must be measured and quantified as the net system load reduction effected during a curtailment event was in effect prior to the DSASP Filing.

Further, sections 4.12.2.1 through 4.12.2.4, which govern the calculation of Unforced Capacity (“UCAP”), provide that a SCR achieves the ability to sell Capacity solely through its ability to control demand (*i.e.*, cause a system load reduction) at the direction of the NYISO during certain reliability events. Each of these manual sections clearly describe the tariff requirement that SCRs must provide capacity through load reduction at the NYISO’s direction. They repeatedly discuss “load reductions” caused by SCRs, as well as the NYISO requesting or requiring SCRs to reduce loads during a SCR event.

Additionally, section 4.12.2.1.3, which provides the formula for determining UCAP for a Generator that is a SCR, defines the “Number of Load Reduction Hours (“NLRH”) variable as “as the number of hours [during the reliability event] in which the Resource was required to operate in order to offset system load.”

Further, sections 4.8.5 and 4.12.3 indicate that SCRs may be partially dispatched based upon their Minimum Payment Nomination (*i.e.*, their strike price) in economic priority (*i.e.*, the least costly resource will be dispatched first). An example in section 4.12.3 states in relevant part:

the NYISO may determine that it needs a Demand Reduction response of 25 MW in Zone J. A total of 50 MW of Special Case Resources located in Zone J is supplying Unforced Capacity. For this example, assume that each MW of Special Case Resource Capacity entered a different Minimum Payment Nomination, from \$0/MWh to \$500/MWh. In order to fulfill its need for 25 additional MW of reserves, the NYISO will call the 25 MW of Special Case Resources in economic order based on their submitted Minimum Payment Nominations starting with lowest values.

If the Complainants' version of the Services Tariff was accepted, then under the scenario contemplated in this example, the NYISO would not be assured that it would obtain the 25 MW reduction. The example demonstrates that the behind the meter generation that Complainants want included in the SCR Program does not actually reduce system load at the request of the NYISO in response to reliability events. Additionally, because the generator is already regularly operating to serve its own load, it incurs no additional costs associated with the NYISO's SCR Program. Therefore, that behind the meter generator would presumably submit a very low strike price thereby making itself very likely to be one of the first in the economic order of SCRs to be called by the NYISO. It would not, however, provide any real load reduction off the system during the event.

4. Complainants' Novel Claims that Existing NYISO Tariff Provisions Are Somehow Invalid Are Without Merit and Constitute Impermissible Collateral Attacks on the Commission Order Accepting Them

Complainants' assertions that core definitions in the currently effective Services Tariff should simply be disregarded in the case of behind meter generation in the SCR Program are unprecedented, unlawful, and must be rejected.²⁵ Contrary to Complainants' assertions, the revisions to the definition of Special Case Resource, and Capacity, were intended and appropriate. As explained above, the intent of the SCR Program is to reduce load at the request of the NYISO during reliability events. The definition of "Capacity" was revised in the DSASP Filing to read:

²⁵ Complaint at 13-14.

2.18 Capacity

The capability to generate or transmit electrical power, or the ability to control demand at the direction of the ISO, measured in megawatts (“MW”).²⁶

The definition of SCR was modified, as follows:

2.172c Special Case Resource

LoadsDemand Side Resources capable of being interrupted upon demand, and distributed Local Generators, rated 100 kW or higher, that are not visible to the ISO’s Market Information System and that are subject to special rules, set forth in Section 5.12.11(a) of this ISO Services Tariff and related ISO Procedures, in order to facilitate their participation in the Installed Capacity market as Installed Capacity Suppliers. Special Case Resources that are not Local Generators, may be offered as synchronized Operating Reserves and Regulation Service and Energy in the Day-Ahead Market, Special Case Resources, using Local Generators rated 100 kw or higher, that are not visible to the ISO’s Market Information System may also be offered as non-synchronized Operating Reserves.²⁷

As clearly shown above these discrete tariff changes, which Complainants argue radically and inadvertently changed SCR eligibility were explicit and intentional modifications that clarify language relating directly to the SCR Program. Specifically, and most pertinent to this discussion, the 2008 filing: (1) revised the definition of Capacity to clearly state that it included “the ability of an entity to control demand at the direction of the ISO”;²⁸ and (2) revised the SCR definition to allow “Demand Side Resources,” not just “Loads.”²⁹

As the DSASP Filing expressly stated, the changes to the definition of Capacity were “in the nature of a tariff clarification, rather than addition, which reflects the fact that Demand Side Resources have been understood to be authorized to sell, and have been

²⁶ DSASP Filing at Attachment II Part 1 at Fourth Revised Sheet No. 29.

²⁷ DSASP Filing at Attachment II Part 1 at Sixth Revised Sheet No. 67A.

²⁸ *Id.*

²⁹ *Id.* at 13.

selling, Unforced Capacity in the NYISO markets for several years.”³⁰ Thus, reverting to the 2008 definition of Capacity could be interpreted as preventing SCRs from offering Capacity; an absurd result that does not provide Complainants their requested relief and that must be dismissed.

Similarly, Complainants’ assertion that the NYISO has “conceded” that the 2008 DSASP Filing changes to the SCR definition were “inadvertent and unintended” must be rejected.³¹ Those presentations discuss a potential issue with respect to the registration of Local Generators that are larger than their loads as SCRs.³² Nothing in those presentations suggests that there had been an “inadvertent error” concerning the definition of Capacity, or the requirement that SCRs be capable of reducing load at the NYISO’s direction. Additionally, nothing in those presentations suggests that the NYISO was seeking to correct an inadvertent error in a manner that would contravene the paramount reliability purpose of the SCR Program.

The currently effective version of the tariff is the rate on file with the Commission, which was found to be just and reasonable,³³ and as such, is the provision that the NYISO must enforce. Complainants’ suggestion that it simply be ignored could not be implemented lawfully. If Complainants objected to the tariff language proposed by the DSASP Filing they should have sought timely rehearing of the Commission’s

³⁰ *Id.* at 11.

³¹ Complaint at 13.

³² *See, e.g.*, July 30, 2010 Presentation at 4; January 19, 2011 Presentation at 2; January 26, 2011 Presentation at 2; February 8, 2011 Presentation at 2.

³³ *New York Independent System Operator, Inc.*, 123 ¶ 61,203 (2008) (accepting the tariff modifications to the definitions of “Capacity and Special Case Resources” as proposed in the DSASP Filing).

order accepting it. They have offered no justification as to why they should effectively be afforded the unprecedented ability to seek rehearing years after the fact.³⁴ Therefore, the Complaint must be dismissed.

B. The Issuance of Technical Bulletin 217 Was Consistent with All NYISO Governance Requirements

The Commission must also dismiss Complainants' claim that the NYISO "circumvented" the ISO Agreement when it issued Technical Bulletin 217.³⁵ The ISO Agreement does not require Management Committee and Board approval of Technical Bulletins. The provisions that Complainants rely upon are only applicable with respect to Section 205 filings to amend the NYISO's tariffs. The ISO Agreement does not address the development or issuance of Technical Bulletins or manuals (which are governed by the *NYISO Manual Review, Revision, and Approval Process*).³⁶

There is also no merit to Complainants' suggestion that a Business Issues Committee vote was needed in order to issue Technical Bulletin 217. Contrary to the Complainants' contention, the NYISO is not required to obtain any stakeholder approvals before issuing a Technical Bulletin. This is entirely appropriate given the narrow scope and purpose of Technical Bulletins and was certainly appropriate in the case of Technical

³⁴ See, e.g., *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 134 FERC P 61,229 at P 15 (2011) ("[collateral attacks on final orders and relitigation of applicable precedent by parties that were active in the earlier cases thwart the finality and repose that are essential to administrative efficiency and are strongly discouraged.]") citing *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co.*, 112 FERC ¶ 61,117, at P 12 (2005); see also *EPIC Merchant Energy NJ/PA, L.P. v. PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,130 (2010) (dismissing as an impermissible collateral attack a complaint that merely sought to relitigate the same issues as raised in the prior case citing no new evidence or changed circumstances).

³⁵ Complaint at 7, 13.

³⁶ See <http://www.nyiso.com/public/webdocs/committees/mc_bls/meeting_materials/2010-02-24/KIRKP_BYLAWS4_022410.pdf>.

Bulletin 217, which simply clarifies and restates an existing rule. Nevertheless, the NYISO routinely solicits stakeholder comments before issuing Technical Bulletins. As was noted above, the NYISO followed this practice before finalizing Technical Bulletin 217 and considered stakeholder input on the draft version.

Consequently, there is no merit to Complainants' claim that Technical Bulletin 217 somehow represented a *de facto* tariff amendment that should not have been adopted without a stakeholder vote approving it.

C. Technical Bulletin 217 Ensures System Reliability by Preventing the Enrollment as Installed Capacity Suppliers, through Double-Counting, of SCRs that Do Not Reduce Demand at the Direction of the NYISO

As explained above, the SCR Program's purpose is to provide the NYISO with reductions in demand during system events. SCRs enrolled in the SCR Program must therefore be able to reduce system load at the request of the NYISO. Merely reducing Load generally is not sufficient. In order to be eligible for the SCR Program, a SCR must provide the NYISO with measurable load reduction during reliability emergencies.

Under Complainants' conception of the Services Tariff similarly-situated SCRs would be treated unequally, potentially giving rise to undue discrimination concerns. Some SCRs would be required to actually respond to the NYISO's directive with a discrete action to reduce load while regularly operating, behind the meter generators would not need to take any discrete action in response to the NYISO to have been deemed to have performed a load reduction.

Even more importantly, reinterpreting the Services Tariff as Complainants' propose would undercut the system reliability benefits of the SCR Program. The NYISO

would be left to rely on some SCRs that are not actually capable of providing MWs of demand reduction on request.

The Complainants specifically take issue with Technical Bulletin 217's reference to "double counting."³⁷ They claim that they do not understand how the inclusion of behind the meter generation constitutes "double counting" for SCR Program purposes.³⁸ The answer is simple; the SCR Program requires that a SCR report metered load when it is enrolled and then again when it reports its load reduction during a called SCR event.³⁹ As Technical Bulletin 217 clearly explains, SCRs enrolled as Installed Capacity Suppliers must produce verifiable load reductions when called upon by the NYISO during reliability events, by ensuring that Responsible Interface Parties properly report data necessary to compute ACL for their resources. But if this generation is included in the ACL values, SCRs that are behind the meter generators regularly serving their own load can appear to have caused a load reduction because this generation is counted twice. First it is counted as system load when determining the ACL baseline and then it is counted again when it is reported as performance in the measurement and verification step.

³⁷ Complaint at 11-12.

³⁸ *Id.*

³⁹ The NYISO's ACL tariff provisions, define "ACL" as "the value in each Capability Period for each Special Case Resource that is equal to the average of the Special Case Resource hourly Load taken from the SCR Load Zone Peak Hours applicable to such Special Case Resource, and computed and reported in accordance with Section 5.12.11.1.1 of this Services Tariff and ISO Procedures. In determining ACL for the Winter and Summer Capability Periods, the NYISO uses "the average highest 20 (twenty) one-hour peak Loads of the Special Case Resource taken from the [40] SCR Load Zone Peak Hours ... to create a Special Case Resource Average Coincident Load ... baseline." *Id.* Section 5.12.11.1 of the Services Tariff also provides that SCRs will be paid "[s]ubject to performance evidence and verification." *Id.* at § 5.12.11.1.

Such a “phantom” load reduction would not meet the requirements of the SCR Program. The Commission has also previously emphasized that demand response market rules should “accurately tie program payments to actual demand response” and ensure that customer baselines “reflect actual available load response.”⁴⁰ Technical Bulletin 217’s clarification of existing SCR Program rules is consistent with this policy and precedent.

Therefore, if this generation were eligible to participate it would be counted twice in the SCR Program. First, the generation would be counted as available capacity to respond to a SCR event (achieved during enrollment by grossing up the metered load values used to determine the ACL) and then that same generation would be counted again as the generation that comes on when the NYISO calls a SCR event to provide the required load reduction that is purchased through the ICAP Markets. For example, assume a behind the meter generator is supplying 2 MW to its load at all times such that the load/SCR in question is not drawing any energy from the NYISO’s system. If this generation is enrolled as a SCR by adding back all 2 MW to its ACL metered demand values, that SCR, which creates zero load on the system, would be credited with a capability of providing 2 MW of load reduction capability. When the NYISO calls upon that resource to perform the NYISO would then perceive and count the behind the meter generator’s 2 MW output as its performance during the event. This would occur despite the fact that the 2 MW of generation provided no actual net load reduction to relieve the existing system conditions for which the SCR was called upon to address.

⁴⁰ *ISO New England, Inc.*, 123 FERC ¶ 61,021 at P 63 (2008).

Allowing this “double counting” results in the SCR being credited with providing a net system load reduction equal to the MW supplied by the behind the meter generation, when in fact the behind the meter generator did nothing in response to the NYISO’s direction to reduce load. The practice that Complainants would have the NYISO endorse would allow a SCR to receive a full capacity payment for generation that it regularly operates to serve base load while providing no benefit to system reliability at the time of the event. This type of participation in the SCR Program contravenes the stated purpose of the SCR Program, the SCR Program tariff provisions, and the Installed Capacity Manual sections containing the implementation details under those provisions. It would adversely impact system reliability. The Complaint must therefore be dismissed.

D. Neither Individual Market Participants Nor the Market as a Whole Will Suffer “Damages” or Any Other Kind of Actionable “Harm” if Behind the Meter Generation that Is Ineligible to Participate in the SCR Program Were Properly Prevented from Doing So

Complainants’, and CPA’s, claims that Technical Bulletin 217 will impose “damages” on or “harm” them and other Market Participants must be rejected.⁴¹ Technical Bulletin 217 explains the requirement that only load consumed by the SCR from the NYISO’s system can be included in the calculation of the ACL or Provisional ACL. Consistent with the Services Tariff, it clarifies that the NYISO will not accept enrollment of SCRs that will not provide load reduction at the request of the NYISO during a reliability related event.

Therefore, Complainants’, and CPA’s, self-interested assertions regarding supposed “damages” and “harm,” must be rejected. Market Participants are not

⁴¹ Complaint at 5, 8; *see also* CPA Comments at 4.

“damaged” in a legally cognizable way when resources that should not be permitted to sell capacity are prevented from doing so. Claims that the market as a whole, or consumers more generally, would be harmed because following reliability-driven eligibility rules might raise capacity prices are equally baseless. The possibility that some market participants may have believed that they could legitimately enroll as SCRs behind the meter generation that does not actually provide emergency demand reduction in response to reliability related events, does not now make it appropriate.

Similarly, CPA is mistaken when it claims that because the NYISO “added back” 118.7 MW of distributed generation supported load to the 2011 peak load, which is used to determine the 2012 Summer ICAP requirement, all behind the meter generation must be eligible to enroll as SCRs.⁴² CPA is reading section 4.12.4.4 of the *Installed Capacity Manual* too broadly. That provision is intended to apply to resources that meet the eligibility requirements for SCRs. It does not, and legally could not, override the eligibility requirements in section 5.12.11.1 of the Services Tariff. If a resource cannot reduce demand at the direction of the NYISO it is not eligible to participate in the SCR program. It is only when a resource meets the eligibility requirements and has operated a generator during the peak hour that the provisions in section 4.12.4.4 of the *Installed Capacity Manual* regarding adding back-up generation to the ICAP forecast are applicable.

Thus, the 118.7 MW were SCR generators that were presumed to have provided a net system load reduction at the direction of the NYISO, as is required under the Services Tariff. The possibility that such MW may actually represent SCR generators that are not

⁴² CPA Comments at 2-4.

eligible ICAP Suppliers does not provide a basis for continuing to allow these resources to qualify as Installed Capacity Suppliers. The mere requirement that a resource procure capacity, does not make such resource an Installed Capacity Supplier. In order for resources to qualify as Installed Capacity Suppliers they must meet the qualifications established in the relevant Services Tariff provisions.

Further, in response to the CPA Comments, it should be noted that the NYISO does not establish the ICAP tags of individual Demand Side Resources or the LSEs; ICAP tags are not addressed in the NYISO tariffs. This function is performed by the New York Transmission Owners. Finally, the CPA Comments are wrong to assert that Technical Bulletin 217 “requires ICAP buyers to purchase more ICAP than would be required under a correct accounting for load and resources.” It is CPA’s reinterpretation of the Services Tariff that would overstate the amount of Capacity available.

III. REQUEST FOR EXPEDITED ACTION

The NYISO respectfully requests that the Commission issue an order by May 1, 2012, to provide it and its Market Participants with certainty concerning the SCR Program eligibility rules prior to the June Auctions. An order by May 1 would provide the NYISO and Market Participants with a full week’s notice regarding the applicable rules before the registration deadline for June.

At this stage, preparations for the May Spot Auction are so far advanced that there is nothing that could be done to change the roster of participating sellers in it. The certification period for May, which establishes the final amount of Capacity available for the month, closes at 5:00 p.m. on Friday, April 20. The offer period for sellers will commence at 8 AM on Tuesday, April 24, and auction results will be posted on Friday,

April 27. At that point the NYISO will shift to preparation for the June Auctions.

Therefore, even if the Complaint had any merit, it would be impossible for the NYISO to accept “late registrations” for May for baseload behind the meter generation that is not capable of responding to demand-reduction directives or for other resources.

IV. COMPLIANCE WITH COMMISSION RULE 213(c)(2)(i)

In compliance with Rule 213(c)(2), Attachment 1 to this answer specifies the NYISO’s denials, admissions, and defenses in response to the Complaint.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator requests that the Commission dismiss the Complaint in its entirety and deny the relief requested by Consumer Power Advocates in their comments.

Respectfully Submitted,

/s/ Ted J. Murphy

Ted J. Murphy
Counsel to the
New York Independent System Operator, Inc.

April 19, 2012

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, DC, this 19th day of April, 2012.

/s/ Ted J. Murphy

Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Ave, N.W.
Washington, DC 20037
(202) 955-1500

Compliance with Commission Rule 213(c)(2)

A. Specific Admissions and Denials of Material Allegations

In accordance with Commission Rule 213(c)(2)(i), to the extent practicable and to the best of the NYISO's knowledge and belief at this time, the NYISO admits or denies the factual allegations in the Complaint, as specified below. To the extent that any fact or allegation in the Complaint is not specifically admitted below, it is denied. Except as specifically stated herein, the NYISO does not admit any facts in the form or manner stated in the Complaint. Denials of allegations made in the text of the Complaint should be understood as encompassing all related allegations and assertions in the attachments accompanying the Complaint.

- The NYISO denies all allegations and characterizations that issuance of Technical Bulletin 217 was unlawful under the Federal Power Act ("FPA") (Complaint at 2, 3, 9, 13).
- The NYISO denies all allegations and characterizations that Technical Bulletin 217 is "void and of no effect" or otherwise invalid as a *de facto* revision to the Services Tariff that could not be implemented absent a filing pursuant to section 205 of the FPA. (Complaint at 2, 3, 9, 13).
- The NYISO denies that it has "circumvented" the stakeholder process or deprived stakeholders of any right to raise objections before the Commission. (Complaint at 9).
- The NYISO denies that in issuing Technical Bulletin 217 it did not follow its governance procedures as required by its organizational documents. (Complaint at 2, 3).
- The NYISO denies that the issuance of Technical Bulletin 217 "results in a substantial change to the [Services] Tariff, which was not voted on and approved by stakeholders" pursuant to the NYISO's governance process. (Complaint at 2, 3).
- The NYISO denies all allegations and characterizations that its issuance of Technical Bulletin 217 will bar eligible behind the meter generation from participating in the SCR Program in a manner that will impose legally cognizable "damages" or "harm" on individual SCRs and the market as a whole. (Complaint at 2, 8, 15).
- The NYISO denies that Technical Bulletin 217 "adds limitations" to the SCR Program that are not supported by provisions in the Services Tariff. (Complaint at 10).
- The NYISO denies that Technical Bulletin 217 "significantly" modifies the SCR Program Services Tariff requirements. (Complaint at 12).
- The NYISO denies that Technical Bulletin 217's clarification that behind the meter generation that cannot reduce load at the direction of the NYISO is not eligible to be enrolled as a SCR is inconsistent with applicable the Services Tariff provisions. (Complaint at 12-13).

- The NYISO denies that changes to the definition of “Capacity” and “Special Case Resource” to clarify that such resources must reduce demand at the direction of the NYISO, that were made as part of the Demand Side Ancillary Services Program (“DSASP”) tariff modifications submitted to, and accepted by, the Commission in 2008, were inadvertent or unintended. (Complaint at 6, 13-14).
- The NYISO denies that the DSASP tariff modifications submitted to, and accepted by, the Commission in 2008 were not considered by stakeholders or that the Commission’s approval of those tariff changes were “not just and reasonable”. (Complaint at 14, 15)
- The NYISO denies that the presentations referenced by Complainants in footnotes 3 and 4 are relevant to the issues raised in this proceeding. (Complaint at 6, 13-14).
- The NYISO denies that it “failed to correct” any supposed “inadvertent error,” that it has violated a commitment to stakeholders to do so, and that it has “issued a Technical Bulletin which, by the NYISO’s own admission in presentations to the stakeholders, required a further tariff change.” (Complaint at 6, 14).
- The NYISO neither admits nor denies all allegations that its adherence to the Services Tariff through the implementation of Technical Bulletin 217 will reduce the amount of Capacity available in the NYCA. (Complaint at 8).
- The NYISO neither admits nor denies Complainants’ claims regarding revenue losses that the Complainants’ or others might incur as a result of its adherence to the Services Tariff through Technical Bulletin 217, but denies that such losses would constitute “damages” or “harms” (Complaint at 8, 15).
- The NYISO admits that it is the Independent System Operator that oversees the reliable operation of the bulk transmission system and administers the wholesale electricity markets in New York State. The NYISO also admits that it was created to provide fair and open access to the electrical grid. (Complaint at 5).
- The NYISO admits that distributed generation has participated in the SCR Program to the extent permitted under the relevant Services Tariff provisions and that such resources have been aggregated by Responsible Interface Parties (“RIPs”) and offered to the NYISO as capacity under the SCR Program. (Complaint at 5).
- The NYISO admits that on March 29, 2012 at a joint meeting of the Installed Capacity Working Group (“ICAPWG”) and Price-Responsive Load Working Group (“PRLWG”) its staff presented to stakeholders a draft of Technical Bulletin 217. The NYISO admits that it solicited comments on Technical Bulletin 217, that such comments were due on April 5, 2012, and that multiple stakeholders submitted comments. (Complaint at 7).
- The NYISO admits that Technical Bulletin 217 provides clarification regarding the eligibility of behind the meter generation to participate in the SCR Program. (Complaint at 7-8).

- The NYISO admits that Technical Bulletin 217 provides that behind the meter generation that does not reduce load at the direction of the NYISO is not eligible to be an Installed Capacity Supplier. The NYISO admits it has indicated to stakeholders that the participation of such resources in the SCR Program would result in a double counting of that generation. (Complaint at 7-8).
- The NYISO admits that it established a date of April 11, 2012 for the registration of capacity in the SCR Program for the May Auction. The NYISO admits that the May Spot Market Auction is scheduled for April 24, 2012 and April 25, 2012. (Complaint at 8).
- The NYISO admits that May 8, 2012 is the close of the enrollment period for the registration of capacity in the SCR Program for the month of June. The NYISO admits that the June Spot Market Auction is scheduled for May 25, 2012. (Complaint at 8).

B. Defenses

In accordance with Commission Rule 213(c)(2)(ii), the NYISO sets forth the following defenses.

- Complainants have failed to meet their burden of proof under section 206 of the FPA, and Commission Rule 206.
- Complainants have not shown that the NYISO's issuance of Technical Bulletin 217 was inconsistent with the FPA. Contrary to Complainants' assertions, Technical Bulletin 217 was properly issued as it: (1) is consistent with the NYISO's Tariffs and the paramount purpose of the SCR program; (2) does not make any change to the NYISO's Services Tariff, and thus did not require a filing pursuant to Section 205 of the FPA; (3) is consistent with the NYISO's *Installed Capacity Manual*; (4) restates valid, Commissionaccepted, Services Tariff requirements.
- Complainants have not shown that the NYISO did not comply with its governance requirements in its issuance of Technical Bulletin 217. The issuance of Technical Bulletins does not require Management Committee or Board approval, nor a vote by the Business Issues Committee.
- Complainants have not shown that Technical Bulletin 217's restatement of requirements that would prevent the "double counting" of generation contravenes the NYISO's currently effective Services Tariff. Complainants have not shown that the NYISO's Services Tariff allows for the participation, in the SCR Program, of behind the meter generation that does not reduce demand at the request of the NYISO.
- Complainants have not shown that they, or any other Market Participant, or the market as a whole, will suffer damages or any actionable harm by the proper exclusion, from the SCR Program, of behind the meter generation that cannot reduce demand at the direction of the NYISO.

C. Proposed Resolution Process

Commission Rule 213(c)(4) states that an answer “is also required to describe the formal or consensual process it proposes for resolving the complaint.” In compliance with that requirement, the NYISO requests that the Complaint be dismissed based solely on the pleadings in this proceeding.