

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

<b>New York Independent System Operator, Inc.</b>	) ) )	<b>Docket No. ER14-39-000</b>
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**REQUEST FOR LEAVE TO ANSWER AND ANSWER  
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) respectfully seeks leave to answer, and submits this answer to, the November 26, 2013, answer of the New York Demand Response Coalition<sup>2</sup> (“DR Coalition”) concerning the NYISO’s proposed revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”) related to Special Case Resources (“SCRs”) in the above-referenced docket.<sup>3</sup>

In its answer, DR Coalition incorrectly states that the NYISO does not have authority to issue shortfall penalties to Responsible Interface Parties (“RIPs”) on an individual SCR basis,<sup>4</sup> and falsely asserts that the NYISO has stated that its methodology for verifying a Provisional Average Coincident Load (“ACL”) baseline is flawed.<sup>5</sup> The NYISO respectfully requests that the Commission reject DR Coalition’s inaccurate assertions and issue an order by December 3,

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<sup>1</sup> See 18 C.F.R. § 385.213 (2013).

<sup>2</sup> *New York Independent System Operator, Inc.*, Motion for Leave to Answer and Answer of New York Demand Response Coalition, Docket No. ER14-39-000 (November 26, 2013) (“DR Coalition Answer”). The DR Coalition is comprised of: EnergyConnect, a Johnson Controls Company; Energy Curtailment Specialists, Inc.; Innoventive Power, LLC; and Energy Spectrum.

<sup>3</sup> *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Related to Special Case Resources, Docket No. ER14-39-000 (October 4, 2013) (“October 2013 Filing”).

<sup>4</sup> DR Coalition Answer at pp. 4-8. The NYISO’s silence on any other points raised in the DR Coalition Answer should not be construed as agreement or acquiescence with them.

<sup>5</sup> *Id.* at p. 8.

2013, accepting the NYISO's proposed tariff revisions set forth in its October 4, 2013, filing ("October 2013 Filing"), without modification.<sup>6</sup>

## **I. REQUEST FOR LEAVE TO ANSWER**

The Commission has discretion to accept answers when they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.<sup>7</sup> The NYISO's answer to DR Coalition's answer satisfies those standards and should be accepted because it addresses inaccurate or misleading statements, and provides additional information that will help the Commission to fully evaluate the arguments in this proceeding.

## **II. ANSWER**

### **A. The NYISO Applies Shortfall Penalties on an Individual SCR Basis Consistent with its Current Tariff Requirements**

The NYISO has clear authority under its tariffs to issue penalties to Installed Capacity Suppliers that sell more capacity than they are qualified to sell.<sup>8</sup> Section 5.14.2 of the Services

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<sup>6</sup> As the NYISO explained in its October 2013 Filing, the NYISO expects to implement the functionality to allow for the proposed SCR changes through a software deployment currently scheduled for March 2014. In order for the NYISO to meet this software deployment schedule, it needs to know by early December the specific tariff revisions that have been accepted by the Commission to allow the NYISO to develop and test the related software changes. See October 2013 Filing at p. 13. Accordingly, the NYISO reaffirms its request that the Commission issue an order by December 3, 2013, accepting the October 2013 Filing within the 60 day period normally applicable to filings under Section 205 of the Federal Power Act.

<sup>7</sup> See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System 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 Independent System 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).

<sup>8</sup> Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO's Market Administration and Control Area Services Tariff ("Service Tariff") or its Open Access Transmission Tariff ("OATT").

Tariff provides, in pertinent part:

If an Installed Capacity Supplier is found, at any point during a Capability Period, to have had a shortfall for that Capability Period, e.g., when the amount of Unforced Capacity that it supplies is found to be less than the amount it was committed to supply, the Installed Capacity Supplier shall be retrospectively liable to pay the ISO the monthly deficiency charge equal to one and one-half times the applicable Market-Clearing Price of Unforced Capacity determined using the applicable ICAP Demand Curve for that ICAP Spot Market Auction for each month the Installed Capacity Supplier is deemed to have a shortfall.

A RIP that enrolls an SCR in the SCR/ICAP program is an Installed Capacity Supplier.<sup>9</sup> Each SCR enrolled by the RIP is qualified on an individual basis and its response is measured on an individual basis.<sup>10</sup> The NYISO has applied the tariff provision excerpted above to penalize RIPs on an individual SCR basis for selling more capacity with respect to an enrolled SCR than the resource has committed to or is capable of providing.<sup>11</sup> Absent such a requirement, a RIP, unlike other Installed Capacity Suppliers, would not be subject to a shortfall penalty when it sells capacity from a resource that was not eligible, not available, or did not exist.

The NYISO has revised its tariffs to supplement its existing shortfall provisions with certain SCR situation-specific shortfall penalties, which enumerate how shortfall penalties are to be applied in those specific instances. In 2011, as part of changes to the SCR baseline requirements that introduced the use of the ACL and Provisional ACL baselines, the NYISO supplemented the general shortfall penalty requirement in Section 5.14.2 to provide for a

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<sup>9</sup> Services Tariff § 5.12.11.1.

<sup>10</sup> Services Tariff § 5.12.11.1.

<sup>11</sup> The NYISO must apply this shortfall penalty provision on an individual SCR basis because the capability of SCRs is enrolled and response is measured on an individual basis before the RIP assigns the SCR to an aggregation. For the NYISO to apply this tariff provision on an aggregate, coincident load basis, new mechanisms would need to be developed to determine the capability and performance of SCRs on an aggregate basis, which is beyond the scope of the proposed tariff revisions.

Provisional ACL-specific shortfall penalty that applies on an individual SCR basis.<sup>12</sup>

Additionally, as part of its October 2013 Filing, the NYISO proposes to insert additional situation-specific shortfall penalties to address how these shortfalls can occur and how the NYISO will identify and measure the extent of the shortfalls associated with an SCR Change of Status or Incremental ACL.<sup>13</sup> Due to the look-back nature of establishing eligibility, participation and performance, these situation-specific shortfalls are uniquely inherent to SCRs.

In its answer, DR Coalition erroneously relies on a different portion of Section 5.14.2 of the NYISO Services Tariff that establishes the “RIP deficiency penalty.” The RIP deficiency penalty is based on the aggregate performance of a RIP’s portfolio of SCRs on a Load Zone basis. However, as described in detail in the NYISO’s November 13, 2013 answer in this proceeding (“November 13 Answer”), this deficiency penalty serves a separate purpose from the shortfall penalties described above.<sup>14</sup>

DR Coalition also creates a false comparison between Generators and RIPs. A Generator’s performance is measured based on the simultaneous output of all of the units that compose that Generator. On the other hand, the NYISO qualifies and measures SCRs on an individual basis, which data is then rolled up as the RIP’s portfolio. The NYISO would have to make fundamental changes to its existing processes to measure and qualify a portfolio of SCRs, which would require the measurement of the coincident output of the resources for determining the capacity baseline as well as performance. The NYISO has not proposed such revisions, nor have stakeholders requested or approved such changes to the NYISO’s existing process.

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<sup>12</sup> See *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,020 (2011) at P 6; FERC Letter Order, Docket No. ER11-2906-001 (May 31, 2011).

<sup>13</sup> October 2013 Filing at pp. 11-13.

<sup>14</sup> *New York Independent System Operator, Inc.*, Request for Leave to Answer and Answer to Protest of the New York Independent System Operator, Inc., Docket No. ER14-39-000 (November 13, 2013).

**B. NYISO's Existing Methodology for Verifying a Provisional ACL Is Outside the Scope of this Proceeding**

DR Coalition falsely asserts that NYISO admitted in its November 13 Answer that its methodology for verifying a Provisional ACL is flawed.<sup>15</sup> The NYISO made no such admission. The NYISO explained in its answer that given the different purposes served by a Provisional ACL and an Incremental ACL, the NYISO has developed different methodologies for verifying a Provisional ACL and an Incremental ACL.<sup>16</sup>

The NYISO has not proposed to change its existing methodology for verifying a Provisional ACL as part of its October 2013 Filing or its November 13 Answer. The NYISO simply indicated that it would be willing to consider with its stakeholders potential revisions to this methodology. DR Coalition's comments on this issue are outside the scope of this proceeding. The Commission should not address in its order issues raised by the DR Coalition that are beyond the scope of this proceeding.

**III. CONCLUSION**

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the NYISO's proposed tariff revisions in the October 4, 2013 filing in the above-referenced docket.

Respectfully submitted,

/s/ Michael J. Messonnier  
Hunton & Williams, LLP  
Counsel for  
New York Independent System Operator, Inc.

November 27, 2013

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<sup>15</sup> DR Coalition Answer at p. 8.

<sup>16</sup> NYISO Answer at pp. 11-13.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served 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 Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2013).

Dated at Washington, D.C. this 27th day of November 2013.

/s/ Catherine Karimi

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