

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

New York Independent System Operator, Inc.)))	Docket No. ER14-39-000
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**REQUEST FOR LEAVE TO ANSWER AND ANSWER TO PROTEST
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”),¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully seeks leave to answer, and submits this answer to, the protest of the New York Demand Response Coalition² (“DR Coalition”) regarding the NYISO’s October 4, 2013, filing of proposed tariff revisions in the above-referenced docket (“October 2013 Filing”).³

In the October 2013 Filing, made in response to specific changes requested by demand response stakeholders, the NYISO proposed tariff revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”) to enhance its Special Case Resource (“SCR”) Installed Capacity program.⁴ Among its proposed revisions, the NYISO proposed changes to the Provisional Average Coincident Load (“ACL”)⁵ rules to increase the flexibility of enrolling

¹ See 18 C.F.R. § 385.213.

² *New York Independent System Operator, Inc.*, Comments and Protest of New York Demand Response Coalition, Docket No. ER14-39-000 (October 25, 2013) (“DR Coalition Protest”). The DR Coalition is comprised of: EnergyConnect, a Johnson Controls Company; Energy Curtailment Specialists, Inc.; Innoventive Power, LLC; and Energy Spectrum.

³ *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”).

⁴ The NYISO’s SCR program allows for the participation of demand side resources (*i.e.*, SCRs) to offer Installed Capacity in the NYISO’s capacity markets through a Responsible Interface Party.

⁵ A “Provisional ACL” is a mechanism by which a RIP can enroll a new SCR that does not have the interval metering Load data from the Prior Equivalent Capability Period required to calculate its ACL baseline.

SCRs without available interval meter data and to establish a mechanism - an “Incremental ACL” - by which a Responsible Interface Party (“RIP”)⁶ may increase an SCR’s ACL baseline to reflect a material increase in the SCR’s Load since the Prior Equivalent Capability Period.⁷ As part of the development of the Incremental ACL, the NYISO proposed a verification process and shortfall penalties. The NYISO also proposed to clarify certain circumstances that could result in an individual SCR having an Installed Capacity shortfall and the method by which the NYISO will calculate the penalty for such shortfall and assess it to the relevant RIP.

DR Coalition protests: (i) the application of shortfall penalties to RIPs on an individual SCR basis, rather than on a Load Zone basis for each RIP’s portfolio, and (ii) the use of a different process for verifying the accuracy of an Incremental ACL than the NYISO’s existing process for verifying the accuracy of a Provisional ACL.⁸

The Commission should reject DR Coalition’s protests and accept the NYISO’s proposed tariff revisions set forth in the October 2013 Filing without modification. The NYISO has applied shortfall penalties on an SCR basis throughout the history of the SCR program. This approach has been and continues to be just and reasonable, as it ensures reliability by reducing

⁶ A Responsible Interface Party is defined in Section 2.18 of the NYISO Service Tariff as: “A Customer that is authorized by the ISO to be the Installed Capacity Supplier for one or more Special Case Resources and that agrees to certain notification and other requirements as set forth in this Services Tariff and in the ISO Procedures.”

⁷ Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) or its Open Access Transmission Tariff (“OATT”).

⁸ As part of the October 2013 Filing, the NYISO proposes to calculate a Verified ACL for each SCR enrolled with an Incremental ACL to determine whether a RIP is subject to a shortfall penalty for overestimating the SCR’s Incremental ACL. The NYISO process for calculating a Verified ACL for a SCR enrolled with a Provisional ACL was put in the NYISO’s tariff in 2011. The NYISO calculates the Verified ACL differently for the Provisional ACL and Incremental ACL. Changes to the NYISO’s method for calculating the Verified ACL with regard to the Provisional ACL were not raised or discussed by NYISO stakeholders in developing the proposed revisions set forth in the October 2013 Filing.

the possibility of a resource overselling capacity. In addition, the NYISO's proposed methodology for calculating a Verified ACL to confirm the accuracy of an Incremental ACL, while different from its existing approach for confirming the accuracy of a Provisional ACL, is just and reasonable. The NYISO's proposal to use meter data from the months in which an SCR is enrolled with an Incremental ACL will result in a Verified ACL that better reflects the SCR's actual Load during the period of time a RIP has enrolled the SCR with an Incremental ACL. These tariff revisions, along with the other revisions filed by the NYISO in the October 2013 Filing, were carefully developed and negotiated with NYISO stakeholders through an extensive stakeholder process that lasted over a year. They were approved by the NYISO's stakeholder Management Committee unanimously by a hand vote with a few abstentions, but no opposing vote.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to accept answers to protests 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.⁹ The NYISO's answer to DR Coalition's protest 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.

⁹ 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). To the extent that the Commission concludes under Rule 213 that the applicable deadline for this answer is within fifteen days of DR Coalition's protest, the NYISO respectfully seeks permission to file this answer one day out-of-time.

II. ANSWER

A. The NYISO's Application of Shortfall Penalties on an SCR Basis is Just and Reasonable and Consistent with the NYISO's Current Tariff Requirements and Practice

In the October 2013 Filing, the NYISO proposed revisions to the Installed Capacity shortfall requirements in Section 5.14.2 of the NYISO Services Tariff to supplement the existing requirements by clarifying certain circumstances that may result in an individual SCR having a shortfall and the method by which the NYISO will calculate the penalty for such shortfall and assess it to the relevant RIP. DR Coalition protests the proposed revisions asserting that the NYISO is expanding the use of individual shortfall and performance penalties.¹⁰ Specifically, DR Coalition asserts that shortfalls in demand response performance are currently determined on a Load Zone basis for each RIP and that the NYISO has not substantiated an expansion of shortfall penalties to measure performance on an individual SCR, rather than a Load Zone, basis, including for penalties associated with an SCR Change of Status.¹¹

The Commission should reject DR Coalition's protest and accept the NYISO's proposed clarifications to the Installed Capacity shortfall penalty requirements. As described below, the NYISO's proposed revisions are just and reasonable, are consistent with the NYISO's existing tariff requirements and practice, and were approved by NYISO stakeholders following an extensive shared-governance development process.

1. The NYISO Currently Assesses Shortfall Penalties on an Individual SCR Basis

The NYISO has historically assessed Installed Capacity shortfall penalties to RIPs on an individual SCR basis. A RIP qualifies as an Installed Capacity Supplier only by enrolling

¹⁰ DR Coalition Protest at p 2.

¹¹ DR Coalition Protest at pp 5-7.

individual SCRs with the NYISO.¹² In the event that a RIP sells more Unforced Capacity than it is qualified to sell in any specific month, the RIP shall be deemed to have a shortfall for that month.¹³ A shortfall may arise under a wide variety of circumstances, not all of which can be anticipated in the NYISO's tariffs. Examples of when a shortfall may occur include when: (i) a RIP enrolls an SCR later determined to be ineligible to participate in the SCR program and sells its purported Unforced Capacity; (ii) a RIP enrolls an SCR that has properly been enrolled by another RIP which results in a sale of the same Unforced Capacity twice; (iii) a RIP does not report that an SCR's capacity has temporarily or permanently ceased to exist due to an SCR Change of Status condition and sells the SCR's purported Unforced Capacity;¹⁴ (iv) a RIP enrolls an SCR using an overstated Provisional ACL; or (v) as proposed, a RIP enrolls an SCR using an overstated Incremental ACL.¹⁵

When a RIP enrolls an SCR at an overstated Load reduction capability and then sells some or all of that overstated capability as Unforced Capacity on behalf of the individual SCR

¹² Services Tariff § 5.12.11.1. For the most part, SCRs are not NYISO customers, and their involvement in the NYISO markets is arranged either through a RIP or by themselves becoming a RIP. For this reason, the NYISO assesses the shortfall penalties arising from the SCR's enrollment to the relevant RIP. The SCR program rules allow RIPs to group individual SCRs located within the same Load Zone into an aggregation.

¹³ Services Tariff § 5.14.2.

¹⁴ For example, in late 2008 the NYISO identified a shortfall penalty pursuant to section 5.14.2 of the Services Tariff to a RIP that had enrolled and sold capacity for several months during the 2007 capability year from a SCR that had shut down its entire operation during these months. Because the SCR facility was subject to a plant shutdown, it had no Load reduction capability that was eligible to be sold as capacity for these months. In 2009, the NYISO defined a specific SCR Change of Status procedure in the Installed Capacity Manual for RIPs to report material long-term changes in Load to avoid potential shortfall penalties. This reporting requirement was expressly added to Section 5.12.11.1.3 of the NYISO Services Tariff in 2011 at the direction of the Commission. As part of the October 2013 Filing, the NYISO is clarifying how it calculates shortfall penalties due to the failure to report a SCR Change of Status.

¹⁵ This example could occur when a RIP enrolls an SCR with an overstated Incremental ACL under the Incremental ACL mechanism proposed by the NYISO in the October 2013 Filing.

for any month in a Capability Period, the NYISO assesses a shortfall penalty on the RIP on an individual SCR basis in accordance with Section 5.14.2 of the NYISO Services Tariff.

Specifically, if the NYISO has found that the Installed Capacity Supplier - *i.e.*, the RIP - has a shortfall for a Capability Period, that Installed Capacity Supplier will be liable for a charge equal to one and one-half times the applicable Market Clearing Price of Unforced Capacity for the relevant month.¹⁶ The NYISO assesses this penalty in response to a RIP's providing inaccurate enrollment information regarding an SCR's ability to sell capacity that it is not capable or qualified to sell. The penalty is necessary as part of the just and reasonable administration of the NYISO's SCR program. As described below, the enrollment of an individual SCR to provide an overstated amount of Unforced Capacity can create adverse impacts on reliability and the NYISO's capacity markets. The shortfall penalty, with the exception of the RIP deficiency penalty described below, does not take into account a RIP's aggregate performance. Prior to Capability Year 2013, the NYISO had assessed shortfall penalties to RIPs for 41 individual SCR shortfalls related to ineligible enrollments and unreported SCR Change of Status.

As part of the baseline rule changes introducing ACL and Provisional ACL requirements in 2011, the NYISO supplemented the general shortfall penalty requirements in Section 5.14.2 by inserting a separate shortfall calculation that applies when a RIP overestimates the Provisional ACL of an individual SCR. The NYISO's stakeholders approved,¹⁷ and the Commission

¹⁶ Services Tariff § 5.14.2.

¹⁷ The tariff revisions were approved by the NYISO's stakeholder Management Committee unanimously with abstentions. *New York Independent System Operator, Inc.*, Proposed Tariff Revisions for the Measurement and Performance of Special Case Resources, Aggregations and Responsible Interface Parties, Docket No. ER11-2906-000 (February 17, 2011) ("February 2011 Filing") at p. 8.

accepted, the NYISO's application of this shortfall penalty on an individual SCR basis.¹⁸ As part of the SCR-related tariff revisions accepted by the Commission in 2011, the NYISO also inserted into Section 5.14.2 of the NYISO Services Tariff a second penalty that may be assessed to RIPs based on the aggregate performance of their portfolio of SCRs on a Load Zone basis.¹⁹ Under this "RIP deficiency penalty," a RIP is subject to a penalty if the greatest single hour of Load reduction achieved by the RIP's SCRs in a Load Zone during an event or test called by the NYISO during the Capability Period does not meet the RIP's aggregate Unforced Capacity obligation for that Load Zone for one or more months in the Capability Period.²⁰ The RIP deficiency rule was added to the tariff in 2011 to work in conjunction with the existing shortfall penalties to collect deficiency charges from RIPs for selling Load reduction capability that has not been demonstrated to exist by requiring that the RIPs can demonstrate for at least one hour that they have achieved the Load reduction sold.²¹ The NYISO has also clarified in the proposed tariff language that a RIP will not be subject to double penalties resulting when an SCR is

¹⁸ February 2011 Filing at p. 7.; *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,020 (2011) ("April 2011 Order") at PP 6, 15; FERC Letter Order, Docket No. ER11-2906-001 (2011) ("May 2011 Order"); *see also* NYISO Revised Proposal for Changes to Measurement and Performance of SCRs, and Implementation Plan, NYISO February 2, 2011, Management Committee meeting, Slide 22 ("A separate RIP deficiency calculation applies to shortfalls associated with any SCRs whose Provisional ACL is greater than the ACLs."), *available at*: http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2011-02-02/Proposed_Implementation_for_Measurement_and_Performance_of_SCRs_MC_020211.pdf

¹⁹ Prior to 2011, the RIP deficiency penalty was described as a procedure in the Installed Capacity Manual.

²⁰ Services Tariff § 5.14.2.

²¹ The NYISO allows the declared value of an individual SCR, which sets the Installed Capacity value, to change from month to month. The NYISO has observed RIPs significantly increasing the available capacity after the high peak Load months of June, July, and August - the months when SCRs are most likely to be deployed for a reliability event. The RIP deficiency penalty does not exclude this practice, but does require that the RIPs demonstrate on the portfolio level for at least one hour in the Capability Period that it has achieved the Load reduction sold in each month of the Capability Period.

subject to multiple shortfall calculations, including those calculated under the RIP deficiency provisions of section 5.14.2.

In its protest, DR Coalition misstates the nature of the shortfall penalties that the NYISO has historically applied to RIPs on an individual basis, conflating the shortfall penalty with the RIP deficiency penalty in arguing incorrectly that the NYISO assesses shortfall penalties on a Load Zone basis.²² DR Coalition erroneously characterizes the NYISO's proposed clarifications to its shortfall penalty requirements as a change in approach for determining shortfalls and the related penalty calculations. In actuality, the NYISO's proposed tariff revisions do not change the NYISO's existing approach for applying a shortfall penalty on an individual SCR basis, but rather simply clarify how the NYISO will make such penalty determinations for an SCR enrolled with a Provisional ACL or modified under an SCR Change of Status condition, along with the insertion of similar requirements for an SCR enrolled with an Incremental ACL.²³

DR Coalition also argues that the NYISO's assessment of shortfall penalties to RIPs on an individual basis does not align with its assessment of shortfall penalties to other Installed Capacity Suppliers.²⁴ Specifically, DR Coalition argues that a RIP with aggregated SCRs is analogous to a Generator composed of multiple generating units.²⁵ DR Coalition argues that, because the performance of the generating units is measured as a single facility, the NYISO

²² DR Coalition Protest at p. 5.

²³ The Incremental ACL and the related shortfall provisions are new features for the NYISO's SCR program that the NYISO, at the demand response stakeholder's request, has worked for over a year to integrate into its SCR program rules.

²⁴ DR Coalition Protest at pp. 6-7.

²⁵ *Id.*

should similarly evaluate the performance of individual SCRs on the basis of a RIP's zonal portfolio.²⁶

Like a RIP, a Generator may also be an Installed Capacity Supplier and as such is subject to shortfall penalties.²⁷ However, a RIP differs from a Generator in ways that are relevant to assessment of shortfall penalties. The NYISO's rules treat a RIP comparably to a Generator, but cannot treat them exactly the same because there are fundamental differences in the resource types and their requisite bidding and operational requirements. Unlike a RIP, a Generator must demonstrate upfront by means of a performance test the capacity that its units can provide. In addition, a Generator with a capacity obligation is required to offer into the NYISO's Energy market every day, is visible to and dispatchable by the NYISO, demonstrates its performance through an Energy schedule, and is required to directly report outages that result in its inability to meet its capacity obligation. Finally, if a Generator is scheduled by the NYISO (e.g., deployed) it must perform as scheduled or otherwise procure real time Energy to make up for its failure to perform as scheduled. A RIP, on the other hand, is not required to provide the NYISO with the same certainty and visibility regarding whether an individual SCR has the eligible capacity which it has enrolled prior to selling that capacity.

2. The NYISO's Assessment of Shortfall Penalties on an Individual SCR Basis Addresses Potential Adverse Impacts on Reliability and the NYISO's Capacity Markets

The NYISO's assessment of shortfall penalties on an individual SCR basis is required to ensure reliability and avoid the overselling of capacity in the NYISO's capacity markets. RIPs become Installed Capacity Suppliers by enrolling eligible capacity - *i.e.*, SCRs that are available

²⁶ *Id.*

²⁷ The NYISO applies any shortfall penalty to a Generator on the basis of its PTID, which may be the whole facility or individual units.

to operate at the direction of the NYISO to reduce Load for a minimum of four consecutive hours.²⁸ The NYISO requires certainty that the commitment to provide Load reduction by an individual SCR enrolled by a RIP accurately conveys the SCR's capability to reduce Load at the time of an event, and, therefore, must address any shortfalls on an individual SCR basis. By overstating the Load reduction capability of an SCR, the RIP could sell more Unforced Capacity for the SCR in the NYISO's capacity markets in advance of its obligation and then fail to deliver the expected Load reduction capability it sold when the SCR is called upon in a demand response event. Additionally, the NYISO has concerns that phantom Load reductions may occur, resulting in an overstatement or misrepresentation of the amount of capacity that an SCR can provide. Phantom Load reduction can occur as a result of an unreported change to the SCR's baseline, which can appear to the NYISO as Load reduction by the SCR that has not actually occurred. NYISO's operators rely on the amount of capacity sold by SCRs with the expectation that they will see an actual Load reduction when the SCRs are deployed. Available capacity is determined from the bottom up, *e.g.*, the sum of available capacity from individual SCRs in a RIP's aggregation of SCRs. Likewise, the response of the RIP's aggregation of SCRs is calculated first on an individual SCR basis (based on ACL minus metered Load during each event hour), and the individual response of each SCR in the Load Zone is then summed for reporting the amount of demand response provided in the hour. Regardless of whether a RIP can draw on other SCRs or add additional resources to cover an SCR's underperformance during a specific demand response event, a RIP should not be enrolling resources that are unlikely to perform at their enrolled capacity, and the NYISO cannot rely on the RIP covering such underperformance in the future.

²⁸ Services Tariff § 5.12.11.1.

Phantom load reductions are not typically known to the NYISO when it makes a determination of a RIP deficiency shortfall at the Load Zone basis. However, if the NYISO identifies such phantom Load reduction prior to the RIP deficiency calculation it would issue an individual shortfall penalty with regard to the specific SCR and exclude that expected performance from the RIP deficiency calculation.

The NYISO does have a requirement for RIPs to report short-term material changes in load that may affect a SCR's ability to deliver its obligation. When these instances are reported, the SCR is not required to change its ACL and is not subject to a shortfall penalty. When a long-term material change in load occurs, is sold and is not reported to the NYISO, the ACL of the SCR is not modified and results in an overstatement of its capability and its response. This contributes to overstated performance of the RIP's aggregation of SCRs, which affects reliability because no reduction from the ACL may have occurred, even though the SCR and RIP had an obligation to reduce load at the instruction of the NYISO equal to the amount of capacity sold. In addition, the RIP and its aggregation of SCRs benefit from the overperformance by having a higher performance factor, which enables the RIP to sell more capacity in future Capability Periods.

B. The NYISO's Proposed Methodology for Verifying an Incremental ACL is Just and Reasonable as It Provides for an Accurate Representation of an SCR's Load During the Period It is Enrolled with an Incremental ACL

In the October 2013 Filing, the NYISO proposed the establishment of an Incremental ACL to permit a RIP to increase an SCR's ACL baseline under certain conditions. As part of the revisions, the NYISO proposed a methodology for determining a Verified ACL to enable the NYISO to verify the accuracy of the increased ACL baseline for an SCR enrolled with an Incremental ACL. In its protest, DR Coalition asserts that the rules for calculating this Verified

ACL should parallel the rules by which the NYISO currently calculates the Verified ACL of an SCR enrolled with a Provisional ACL.²⁹ For the reasons described below, the Commission should reject DR Coalition's protest and accept the NYISO's proposed approach for calculating the Verified ACL for an SCR enrolled with an Incremental ACL.

The Incremental ACL and Provisional ACL serve different purposes, and the different manner in which Verified ACLs are calculated with regard to each baseline reflects these differences. The Provisional ACL allows SCRs without sufficient meter data available to calculate an ACL to participate in the Capability Period. The Incremental ACL allows an SCR to increase its capacity baseline over the amount that it would be eligible to enroll with using the ACL methodology. The Incremental ACL is not an alternative way to enroll an SCR with a Provisional ACL.³⁰

Under its proposed rules, the NYISO will calculate the Verified ACL for an SCR enrolled with an Incremental ACL based on meter data from each month the SCR is enrolled with an Incremental ACL. As the NYISO explained in the October 2013 Filing, the NYISO will use monthly meter data to calculate a Monthly ACL for the SCR, based on the top 20 hours of its Load that are coincident with the top 40 hours of NYCA Load in the month. The average of the highest two Monthly ACLs during the period of enrollment using an Incremental ACL will then

²⁹ DR Coalition Protest at pp. 10-11. The NYISO developed the verification method for Provisional ACL in 2011, when it originally developed the rules for ACL and Provisional ACL. The NYISO did not revisit the verification rules for Provisional ACL when developing the SCR rule enhancements proposed in the October 2013 Filing and stakeholders did not raise this issue with the NYISO when it was developing the rules for Incremental ACL.

³⁰ An Incremental ACL requires verification data to substantiate the reported increase to the ACL. The NYISO originally proposed a requirement for proof of the increase prior to enrolling a SCR with an Incremental ACL. Stakeholders requested that the NYISO consider using a verification method after the Capability Period to allow the RIP to benefit immediately from a qualifying increase in Load. The NYISO proposed, and stakeholders approved, the method described in the October 2013 Filing.

be used to calculate a Verified ACL.³¹ Regardless of whether the SCR enrolls with an Incremental ACL for the entire Capability Period or a portion of the Capability Period, the proposed method for verification is the same and provides for an accurate representation of an SCR's Load during the period it is enrolled with an Incremental ACL.

In contrast, DR Coalition proposes that the NYISO use the same verification method with regard to an Incremental ACL as it currently does for a Provisional ACL. The Provisional ACL, like the proposal for Incremental ACL, is verified after the Capability Period with meter data collected during the Capability Period in which the SCR participates; however, the method used to calculate the Verified ACL for a Provisional ACL does not always allow for a Verified ACL. A Verified ACL for an SCR enrolled with a Provisional ACL is based on the average of the highest 20 of the 40 SCR Load Zone Peak Hours for the Capability Period. When enrollment with a Provisional ACL takes place in one of the later months of a Capability Period, the RIP may not have meter data for at least 20 of the SCR Load Zone Peak Hours required to calculate the Verified ACL. If the NYISO relied on this methodology for verifying an Incremental ACL, then, depending on the timing of the enrollment of an SCR with an Incremental ACL, this could result in a situation in which the NYISO could not calculate a Verified ACL for the purpose of verifying the Incremental ACL. Moreover, the Verified ACL could include data from months in which the SCR may not have been enrolled with an Incremental ACL and, thereby, result in a less accurate baseline.

An example of the NYISO's proposed approach for verifying an Incremental ACL is as follows. Assume an SCR enrolls for the first two months of the Capability Period with an ACL,

³¹ As proposed in the October 2013 Filing, when required Incremental ACL verification data for a month is not reported, that month is included as a zero in the average of the Verified ACL for SCRs enrolled with an Incremental ACL.

which is calculated based on the average of the highest 20 of the 40 SCR Load Zone Peak Hours from the Prior Equivalent Capability Period. Prior to the third month of enrollment, the SCR determines that its Load will have an eligible material increase due to an increase in production for the remainder of the Capability Period. The RIP could then enroll the SCR with an Incremental ACL for the remainder of the Capability Period. The SCR's performance for any events that occur in the first two months will be measured against the ACL in which the SCR is enrolled for those months. The SCR's performance for any events that occur in the remainder of the Capability Period will be measured against the Verified ACL, which, as described above, is based on the monthly data for those months in which the SCR is enrolled with an Incremental ACL. Any Incremental ACL shortfall penalty will be assessed only for the months in which the SCR was enrolled with the Incremental ACL.

Finally, at no time in the development of the proposed rules for reporting and enrolling SCRs with Incremental ACLs did stakeholders suggest reconsidering the appropriateness of the Provisional ACL verification methodology or applying the verification process used for a Provisional ACL to verify an Incremental ACL. The DR Coalition's suggestion that a parallel verification process should be used now without making an effort to first address its concerns through the NYISO stakeholder process is contrary to Commission policy and precedent.³² This is especially true in this proceeding because DR Coalition had ample time and opportunity to raise this issue in the NYISO stakeholder process but never did so. The Commission should not permit DR Coalition to perform an "end run" around the NYISO's stakeholder process. The

³² See, e.g., *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 34 (2010) ("we encourage parties to participate in the stakeholder process if they seek to change the market rules..."); *ISO New England Inc.*, 125 FERC ¶ 61,154 (2008) (directing that unresolved issues be addressed through the stakeholder process); *New York Independent System Operator, Inc., New York Transmission Owners*, 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").

NYISO is willing to consider with its stakeholders revisions to the Provisional ACL verification method to make it similar to, or the same as, the Incremental ACL verification process.³³ The benefit of such change would reduce the possibility that a Provisional ACL is not subject to verification because it has less than 20 metered Load data points coincident with the applicable SCR Load Zone Peak Hours in the Capability Period. However, any such revisions to the verification requirements already approved by NYISO stakeholders for purposes of the October 2013 Filing should be addressed through the NYISO stakeholder process.

C. The NYISO’s Proposed Tariff Revisions Were Approved by NYISO Stakeholders

The NYISO’s proposed tariff revisions were thoroughly vetted by NYISO stakeholders through a shared-governance process lasting longer than a year and were approved by the NYISO’s stakeholder Management Committee unanimously with abstentions, but without an opposing vote. The NYISO typically brings groups of related market rule changes to the stakeholders so that the rules can be developed to ensure that they are comprehensive and that the associated software changes can be implemented to improve the administration of the NYISO’s markets. The proposed tariff revisions in the October 2013 Filing address related aspects of enrollment for SCRs, penalties associated with improper, incomplete, or inaccurate enrollments, and clarifications for reporting SCR Change of Load and SCR Change of Status.

³³ Even if the Commission were to conclude that DR Coalition’s proposed approach is also a just and reasonable approach, Commission precedent is clear that alternative methodologies can simultaneously be just and reasonable without diminishing the justness and reasonableness of others. *PJM Interconnection, LLC*, 119 FERC ¶ 61,063 at P 41 (2007) (stating that “on the same set of facts there can be ‘multiple just and reasonable rate designs’”); *California Independent System Operator Corporation*, 119 FERC ¶ 61,076 at P 14 (2007) (stating that “there can be more than one just and reasonable proposal, and the proposal under consideration will be selected unless it is found unjust and unreasonable”); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,241 at P 62 (2006) (stating that “[u]nder the FPA, if we find that the Midwest ISO has successfully supported the justness and reasonableness of its proposal, we must approve it even if there are other just and reasonable ways...”).

Any delay or changes to the NYISO filing, as proposed, jeopardizes the implementation of these program enhancements as a whole for the Summer 2014 Capability Period.

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 2013 Filing in the above-referenced docket.

Respectfully submitted,

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November 13, 2013

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 13th day of November 2013.

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