

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

New York Independent System Operator, Inc.)))	Docket Nos. EL07-39-006 ER08-695-004 ER10-2371-000
---	-------------	---

**REQUEST FOR EXPEDITED CLARIFICATION OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests clarification of a single aspect of the Commission’s March 19, 2105 Order in the abovecaptioned proceedings (“March 2015 Order”).¹ Specifically, the NYISO seeks clarification of whether the March 2015 Order’s ruling regarding the treatment of rebates and other benefits from state programs received by Special Case Resources (“SCRs”)² is applicable to Mitigated Capacity Zones³ other than New York City. As discussed below, it seems likely that the Commission intended for the ruling to apply to all Mitigated Capacity Zones but the NYISO seeks clarification because the above-captioned proceedings have, to date, only addressed New York City⁴ capacity market power mitigation issues.

The NYISO also requests that the Commission grant clarification expeditiously, and no later than April 6, 2015, so that Market Participants will know with certainty what rules will govern the NYISO’s exemption and Offer Floor determinations under its buyer-side capacity market power mitigation rules (“BSM Rules”) for new SCRs located outside of New York City.

¹ *New York Independent System Operator, Inc.*, 150 FERC 61,208 (2015).

² Capitalized terms that are not otherwise defined herein have the meaning set forth in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

³ As described below, presently there is only one other Mitigated Capacity Zone: the G-J Locality, which is comprised of Load Zones G, H, I and J.

⁴ The NYISO’s tariffs also define New York City as “Load Zone J” and “In-City.”

Market Participants and the NYISO are already in the midst of making preparations for the Monthly Auction for May 2015, which occurs in April. As discussed below, the SCR enrollment period closes on April 8, 2015. That date is also the deadline for submitting Offer Floor information for new SCRs in Mitigated Capacity Zones for the May Monthly Auction. The NYISO issues exemption and Offer Floor determinations for new SCRs promptly after receiving that information. Pursuant to the Services Tariff, that same Offer Floor calculation is used to determine whether SCRs are exempt from Offer Floor mitigation, or are not exempt and thus subject to an Offer Floor mitigation.⁵

Finally, the NYISO requests that, if the Commission does not rule on this request for clarification by April 6, any order requiring the application of the March 2015's ruling regarding State programs apply to SCRs in Load Zones G, H and I (*i.e.*, those located in the one existing Mitigated Capacity Zone other than New York City (Load Zone J)) and any future Mitigated Capacity Zone⁶ be deferred for twenty days from the date of its issuance. The delay would enable the NYISO to make necessary adjustments to its procedures and analyses with due care and to notify Market Participants. It would also afford Market Participants time to take measures in recognition of the ruling.

I. BACKGROUND

Docket Nos. EL07-39 and ER08-695 originated with the Commission's 2007 inquiry into the structure of the NYISO's capacity market design and market power mitigation measures in

⁵ Services Tariff Section 23.4.5.7.5(b).

⁶ Although the March 2015 Order and this requested clarification has no administrative effect on any Mitigated Capacity Zone that might be created in the future, the tariff section that contains the language in question would apply to it. Therefore, clarification at this time is appropriate.

New York City.⁷ To date, the Commission’s proceedings in those dockets have only addressed issues involving New York City. Until 2014, New York City was the only part of the New York Control Area where BSM Rules were in place.

In general, the Commission’s May 2010 Order in Docket Nos. EL07-39-004 and -005 and ER08-695-002 and -003 accepted the NYISO’s proposal for calculating Offer Floors for new SCRs.⁸ But it also directed that “subsidies or other benefits designed to encourage SCRs should be included in the calculation of the Offer Floor.”⁹ The May 2010 Order further held that two particular programs — New York State Energy Research and Development Authority (“NYSERDA”) rebates and the Consolidated Edison Company of New York, Inc.’s Distribution Load Relief Program — should be exempt from the rule and that payments received by SCRs under them should be excluded from Offer Floor calculations.¹⁰ The NYISO was directed to establish tariff criteria to determine whether subsidies or other benefits under other state programs should be included in SCR Offer Floor determinations.¹¹

The NYISO’s August 2010 Compliance Filing¹² proposed revisions to Section 23.4.5.7.5 of the Services Tariff specifying that “[t]he Offer Floor calculation shall include any payment or the value of other benefits that are awarded for offering or supplying In-City Capacity, except for payments or the value of other benefits provided under programs administered or approved by

⁷ *New York Independent System Operator, Inc.*, 118 FERC ¶ 61,182 at P 1 (2007) (instituting an FPA Section 206 proceeding in Docket No. EL07-39-000 to “investigate the justness and reasonableness of the New York ISO’s in-city ICAP market”).

⁸ *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,170 (2010) (“May 2010 Order”).

⁹ March 2015 Order at P 21; *citing* May 2010 Order at P 133.

¹⁰ March 2015 Order at P 137.

¹¹ *Id.*

¹² The NYISO originally made this compliance filing on August 12, 2010 but later re-submitted it on August 24, 2010 in Docket No. ER10-2371-000 because of eTariff software issues.

New York State or a government instrumentality of New York State.”

Subsequently, the NYISO made a filing in Docket No. ER12-360-000 in June 2012 to “implement both buyer-side and supplier-side mitigation measures for [New Capacity Zones] using the same conceptual framework of the existing market mitigation measures currently applicable to the New York City Locality.”¹³ The June 2012 Compliance Filing included a revision to Section 23.4.5.7.5 so that the rule governing the treatment of New York State payments and other benefits in BSM Rule calculations for new SCR determinations would apply to capacity in any “Mitigated Capacity Zone” instead of only to In-City capacity. The Commission accepted this revision in a June 2013 Order.¹⁴ The SCR BSM Rules in Section 23.4.5.7.5 are thus now applicable to New York City, the G-J Locality, and to any Mitigated Capacity Zone that may be created in the future.

The March 2015 Order acted on requests for clarification and rehearing of, among other things, the May 2010 Order’s determination regarding New York State SCR programs. It directed the NYISO to revise Section 23.4.5.7.5 to establish that “unless ruled exempt by Commission order on a request for exemption filed by the state, all rebates and other benefits from state programs must be included in the SCR Offer Floor.”¹⁵

II. Request for Clarification

It is clear that the March 2015 Order requires the NYISO to revise Section 23.4.5.7.5 to specify that all “rebates and other benefits” under New York State programs to SCRs in New York City will be included in determinations under the BSM Rules for new SCRs in New York City prospective from the date of the order. It is not clear whether that revision is also to apply

¹³ *New York Independent System Operator, Inc., Further Compliance Filing* at 1 (June 29, 2012).

¹⁴ *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (“June 2013 Order”).

¹⁵ March 2015 Order at P 30.

to new SCRs in the Load Zones G, H, and I (*i.e.*, those within the G-J Locality)¹⁶ or in any Mitigated Capacity Zones that may be created in the future. New SCRs in the G-J Locality and any future Mitigated Capacity Zones are subject to Section 23.4.5.7.5 due to the developments in Docket No. ER12-360 that occurred between the issuance of the May 2010 Order and March 2015 Order in these proceedings.

As described above, the Docket No. ER12-360 proceedings concerned the implementation of capacity market power mitigation measures in new Localities.¹⁷ By contrast, the above-captioned proceedings have, to date, been confined to market power mitigation issues in New York City. In the past, there have been discussions in the Commission's proceedings addressing the G-J Locality as to whether New York City mitigation issues were beyond the scope of those proceedings.¹⁸

On the other hand, there is nothing in the text of the March 2015 Order that expressly confines its holdings to New York City. The NYISO is also not aware that the Commission intended that a different rule should apply in New York City than in other Mitigated Capacity Zones. Indeed, the NYISO has argued in the past that, in general, the same rules should apply to

¹⁶ If a resource is located in more than one Mitigated Capacity Zone (*e.g.*, a resource located in Load Zone J (New York City) is also within the G-J Locality,) the NYISO's BSM Rule determination is based on the smallest Mitigated Capacity Zone in which the resource is located (in the example, New York City.)

¹⁷ A proposed new Locality is a "New Capacity Zone" prior to its acceptance.

¹⁸ See June 2013 Order at PP 108-109 (summarizing arguments against considering a proposal to revise rules governing the treatment of mothballed units in ICAP Spot Market Auction forecasts in New York City in Docket No. ER12-360-000, on the ground that they were outside the scope of that proceeding). See also, *New York Independent System Operator, Inc.*, 147 FERC ¶ 61,252 at P 37 and n. 75 (granting rehearing to require the NYISO to revise the rebuttable presumption of its Pivotal Supplier threshold for the G-J Locality by deleting the current exclusion of forward capacity sales; and specifically limiting the scope of the ruling because the proceeding did not concern the established New York City mitigation rule).

all Mitigated Capacity Zones.¹⁹ It therefore seems likely, but is not certain, that the Commission intended for the March 2015 Order's ruling to apply in all Mitigated Capacity Zones.

This question is not an abstract one. For example, NYSERDA has incentives available statewide for participating in the SCR program, so they are available in Load Zones G, H, I and J. NYSERDA also has Con Edison-specific rebate programs that are currently available to SCRs located within Con Edison's service territory of Load Zones H, I and J. Con Edison's Rider U Distribution Load Relief program is also available to its customers in Load Zones H, I, and J. Thus, the NYISO and Market Participants need to know with certainty whether BSM Rule determinations for new SCRs in Load Zones G, H, and I should include or exclude payments and benefits under these programs. In the interim, the NYISO intends to apply the March 2015 Order's ruling only when making determinations for new SCRs located in New York City but not to determinations for new SCRs in Load Zones G, H, and I or any other Mitigated Capacity Zone that might be created in the future. The NYISO will provide additional information on this approach in its compliance filing in this proceeding.

It bears emphasizing that the NYISO's request for clarification does not constitute support for or opposition to the Commission's ruling on state programs. Specifically, the NYISO's request is not intended to impede New York State programs or policies that may be designed to promote SCR development outside of New York City. The NYISO seeks only to clarify the scope of its own compliance obligation under the March 2015 Order and to ameliorate any market uncertainty that the Commission's ruling has created.

¹⁹ See, e.g., *Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, Docket No. ER12-360-001, August 6, 2012 at 10 ("the NYISO believes that it is essential for the buyer-side mitigation rules, including exemption provisions, to be consistent between New York City and any future [New Capacity Zone] unless there is a valid reason to make a distinction").

III. Request for Expedited Action

The NYISO asks that the Commission grant clarification as soon as possible and emphasizes that it would be especially helpful if clarification were provided no later than April 6, 2015. Market Participants must submit information to the NYISO on new SCRs in relation to the enrollment deadlines in advance of each ICAP Monthly Auction. For example, the enrollment period for the May Monthly and ICAP Spot Market auctions closes on April 8. The deadline for submitting data and information for enrolled new SCRs in Mitigated Capacity Zones for the auctions for the month of May is also April 8. If the Commission were to provide clarification by April 6, it would permit Market Participants to adjust their strategies for May accordingly.

IV. Request that the Effectiveness of Any Ruling Applying the March 2015 Order's Determination Regarding New York State Programs to Mitigated Capacity Zones Other Than New York City Be Deferred for Twenty Days

Finally, the NYISO requests that, if the Commission grants clarification after April 6, 2015 that the March 2015 Order's ruling regarding New York State programs is intended to apply to all Mitigated Capacity Zones, it defer the application of that ruling to new SCRs outside of New York City for twenty days from the date of the issuance of an order on clarification. A twenty day delay would allow Market Participants time to recognize the ruling in advance of future capacity auction activity while meeting deadlines for submitting information in the weeks leading up to the auctions.²⁰ It would also enable the NYISO to implement the ruling with due care.

²⁰ The ICAP Event Calendar provides approximately 15 to 18 days between the date the SCR enrollment period for an auction month opens, and the date it closes. The closing date is also the date by which new SCR Offer Floor data has to be provided to the NYISO. Therefore, should an order on clarification requiring the application of the March 2015 ruling outside of New York City fall within the enrollment period, it would not affect new SCRs or Responsible Interface Parties which engaged in auction activity based on a new SCR's participation, until the next following auction month. If such an

V. Conclusion

For the reasons specified above, the NYISO respectfully asks that the Commission act expeditiously, and no later than April 6, to grant the requested clarification. The NYISO also asks that, if the Commission clarifies that the March 2015 Order's ruling regarding the treatment of New York State programs in BSM Rule determinations for new SCRs is applicable to all Mitigated Capacity Zones, it delay the applicability of that ruling outside of New York City for twenty days from the date of its issuance.

Respectfully submitted,

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

March 30, 2015

cc: Michael A. Bardee
Gregory Berson
Anna Cochrane
Morris Margolis
David Morenoff
Daniel Nowak
Kathleen Schnorf
Jamie Simler
Kevin Siqveland

order is applied prospectively and issued before the opening of the enrollment period, there would be adequate opportunity for the NYISO to provide notice to Market Participants, and for Market Participants to recognize the order.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 30th day of March, 2015.

/s/ Joy A. Zimmerlin

Joy A. Zimmerlin
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-6207