

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

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| New York Independent System Operator, Inc. |)))) | Docket No. ER16-1213-000 |
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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 Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and answer (“Answer”). The Answer responds to the comments and limited protests of the NYISO’s Behind-the-Meter Net Generation (“BTM:NG”) tariff filing submitted on March 17, 2016.² The protests and comments addressed herein were submitted by: (i) Independent Power Producers of New York (“IPPNY”),³ (ii) NY DG Holding LLC (“NY DG”),⁴ and (iii) ReEnergy Holdings LLC (“ReEnergy”).⁵

The NYISO respectfully requests that the Commission reject the limited protests of IPPNY and NY DG, and the effective date proposed by ReEnergy. For the reasons described below, the NYISO believes that the tariff revisions proposed in the March 17 Filing regarding

¹ 18 C.F.R. § 385.213 (2016).

² *New York Independent System Operator, Inc.*, Proposed Amendments to the NYISO Open Access Transmission Tariff and Market Administration and Control Area Services Tariff to Incorporate Behind-the-Meter Net Generation Resources into the NYISO’s Energy, Ancillary Services and Capacity Markets, Docket No. ER16-1213-000 (Mar. 17, 2016) (“March 17 Filing”).

³ *Limited Protest of Independent Power Producers of New York, Inc.*, Docket No. ER16-1213-000 (Apr. 7, 2016) (“IPPNY Protest”).

⁴ *Motion to Intervene and Limited Protest of NY DG Holding LLC*, Docket No. ER16-1213-000 (Apr. 7, 2016) (“NY DG Protest”).

⁵ *Motion to Intervene and Comments of ReEnergy Holdings LLC*, Docket No. ER16-1213-000 (Apr. 7, 2016) (“ReEnergy Comments”).

the allocation of Capacity Resource Interconnection Service (“CRIS”) are just and reasonable, and are an equitable method for allocating CRIS to Installed Capacity (“ICAP”) resources participating in the NYISO’s markets. The NYISO further contends that ReEnergy’s request for a firm effective date of October 15, 2016 fails to adequately consider the breadth and complexity of the design and implementation of the NYISO’s proposed Tariff revisions.

I. Motion for Leave to Answer

The Commission has discretion to accept, and has accepted, comments and answers to responsive pleadings when doing so assures a complete record, provides helpful information, permits the issues to be narrowed or clarified, or aids the Commission in understanding and resolving issues.⁶ This Answer satisfies these standards because it is narrowly tailored to address certain issues raised in the comments of IPPNY, NY DG, and ReEnergy; specifically, the transition mechanism for the allocation of Capacity Resource Interconnection Service (“CRIS”) under the proposed rules, as well as the NYISO’s proposed flexible effective date.

II. Comments

A. IPPNY’s Proposed Elimination of the CRIS “Transition Rule” Would Raise Unnecessary Barriers to BTM:NG Resources Entering the NYISO Capacity Market.

IPPNY challenges the NYISO’s proposal to permit certain BTM:NG Resources to obtain CRIS under the transition rule in NYISO Open Access Transmission Tariff (“OATT”) Sections 25.9.3.3 and 25.9.3.4.1 of NYISO’s proposed tariff revisions (the “Transition Rule”). IPPNY argues that the proposed Transition Rule is not appropriate because BTM:NG Resources should

⁶ See, e.g., *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 (2002) (accepting answers to protests that helped to clarify issues and did not disrupt the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 (2000) (accepting an answer that was helpful in the development of the record); and *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 (2000) (accepting an answer deemed useful in addressing issues arising in the proceeding at issue).

not be allowed to enter the market without being tested to assure that they are deliverable. However, as discussed below, the Transition Rule is an appropriate means to apply this new expansion of the deliverability requirement on a prospective basis.

The proposed Transition Rule would allow facilities to obtain CRIS through one of two mechanisms: (1) if the facility pre-dated Class Year 2007, it may request CRIS, within 60 days of the effective date of the tariff revisions, pursuant to the existing “grandfathering” provisions in OATT Section 25.9.3.1; or (2) if the facility has completed all required interconnection studies and has an effective interconnection agreement by the effective date of the proposed tariff revisions, it may request CRIS within 60 days of the effective date of the proposed tariff revisions, as long as it has not been out-of-service for more than three consecutive years, and was not subject to the NYISO’s interconnection procedures in Attachments X and Z of the OATT when first interconnected.⁷

IPPNY’s claim that “the NYISO’s proposed Transition Rule would unfairly diminish the value of resources that have demonstrated their deliverability” is unsupported. The proposed Transition Rule seeks to provide comparable treatment between BTM:NG Resources and traditional generators. It is consistent with the manner in which generators were grandfathered from the NYISO’s Deliverability Interconnection Standard when it was first implemented. When the NYISO proposed the currently effective provisions in Section 25.9.3.1 of Attachment S to the OATT, it proposed that the new deliverability requirement be applied to projects in Class Year 2007 and thereafter. Because of concerns about applying a new standard to facilities retroactively, the NYISO’s proposal included what has become known as the CRIS

⁷ March 17 Filing at 49-50; proposed OATT, Attachment S, §§ 25.9.3.3 and 25.9.3.4.1.

“grandfathering” provisions.⁸ Under that provision, existing generators were given CRIS based on the demonstrated maximum capability over a five year period—regardless of whether those generators were deliverable. Similarly, the NYISO’s March 17 Filing proposed a prospective application of the new deliverability requirements.

Contrary to IPPNY’s contention,⁹ analyses performed before and soon after the implementation of the Deliverability Interconnection Standard suggested that some or much of the grandfathered generation was not deliverable under that standard. If existing generators were deliverable, there would have been no need to create a mechanism by which to grandfather them from deliverability. In fact, the NYISO clearly stated to the Commission prior to submitting its Consensus Deliverability Plan that, “[w]hile the NYISO’s preliminary analyses so far do not suggest a deliverability problem in New York, the studies do not permit any definitive conclusions about overall deliverability”¹⁰ The deliverability analyses performed as part of the deliverability compliance filing involved five (5) separate methodologies, three (3) scenarios and multiple sensitivity analyses.¹¹ As NYISO advised the Commission in regards to these analyses:

[T]he application of the five alternative test methodologies to a working definition of deliverability has revealed no reliability criteria violations resulting from capacity delivery constraints over the 2004-2009 period studied. ***This study work does reveal that some individual capacity resources may be “bottled,” i.e., not deliverable*** to all loads at all times, depending on system

⁸ In its March 17 Filing, the NYISO proposed to move the existing grandfathering provisions to a subsection of OATT § 25.9.3 - § 25.9.3.3 “CRIS for Facilities Pre-Dating Class Year 2007.”

⁹ IPPNY Protest at 8.

¹⁰ *New York Independent System Operator, Inc. and the New York Transmission Owners*, Consensus Deliverability Plan, Docket Nos. ER04-449-003, ER04-449-007, and ER04-449-008 (Oct. 5, 2007) (“Consensus Deliverability Plan”) at 1.

¹¹ *New York Independent System Operator, Inc.*, Status Report on Deliverability Analysis, Docket Nos. ER04-449-003, ER04-449-007, and ER04-449-008 (Nov. 30, 20015) at 5-6.

conditions and, importantly, depending on the particular methodology used.¹² (emphasis added)

Indeed, the first Class Year Study in which the final Deliverability Interconnection Standard¹³ applied - Class Year 2008 - found the base case undeliverable - *i.e.*, there were deliverability constraints among the existing facilities that received CRIS under the original grandfathering provisions. Therefore, contrary to IPPNY's assertion, the original set of generators subject to "grandfathering" from deliverability were neither determined to be deliverable nor actually deliverable under the NYISO Deliverability Interconnection Standard ultimately approved by the Commission.

Moreover, the proposed Transition Rule is designed to be narrow in scope, allowing BTM:NG Resources only a 60 day window to request CRIS and only if they meet the specific requirements set forth in Section 25.9.3.3 or 25.9.3.4.1 of Attachment S. This is far more stringent than the original grandfathering provisions which had no deadline by which to request CRIS.¹⁴ The Transition Rule is intended to provide a fair transition mechanism to resources that are existing and did not know when they were built that the NYISO would propose this new deliverability requirement for all generators seeking to become Installed Capacity Suppliers.

¹² *New York Independent System Operator, Inc.*, Protest and Comments on the Compliance Filing of the New York Transmission Owners, Docket Nos. ER04-449-003, ER04-449-007, ER04-449-008, and ER04-449-014 (June 28, 2006) at 11.

¹³ While the Deliverability Interconnection Standard first applied in Class Year 2007, the final iteration of the standard was first implemented in Class Year 2008 in which specified external system imports were preserved at certain levels - *e.g.*, the Existing Transmission Capacity for Native Load listed for the New York State Electric & Gas Corporation documented in Attachment L of the OATT and 1090 MW of imports made over the Quebec interface (via Chateauguay). See NYISO OATT, Attachment S, § 25.7.8.2.9.

¹⁴ IPPNY's argument that if subject to the original grandfathering provisions, a facility has lost its CRIS if it has not participated in the market for three (3) years ignores the plain language of the tariff. The grandfathering provisions in Section 25.9.3 did not require all pre-Class Year 2007 generators to come forward immediately to request CRIS if entitled to obtain CRIS under the grandfathering provisions. Moreover, the three-year "deactivation rule" included in Section 25.9.3.3 - providing that a facility's CRIS terminates after it is "CRIS-inactive" for three (3) years - only applies once a generator has obtained CRIS.

IPPNY should not be permitted to foreclose participation by BTM:NG Resources pending a deliverability analysis. Presumably, IPPNY would require BTM:NG Resources to fund System Deliverability Upgrades if found to be undeliverable. Such a “one off” deliverability analysis is neither appropriate nor practical and most importantly, is contrary to the treatment afforded to the original set of grandfathered generators.

The NYISO’s proposal would for the first time require facilities that are not subject to the NYISO’s interconnection process to satisfy the Deliverability Interconnection Standard in order to participate in the capacity market. IPPNY incorrectly argues that the NYISO’s existing tariff already requires “non-jurisdictional” facilities to satisfy the Deliverability Interconnection Standard. IPPNY ignores the current tariff structure under which the only way to subject facilities to the Deliverability Interconnection Standard is through the NYISO’s interconnection process (specifically, Attachment S to the OATT). The plain language of Attachment S applies only to Large Facilities and to certain Small Generation Facilities.¹⁵ Both of these types of facilities are, per Order Nos. 2003 and 2006, connecting to FERC-jurisdictional transmission or distribution.¹⁶ IPPNY misconstrues the language of Section 5 of the Market Administration and Control Area Services Tariff (“MST”) to arrive at the conclusion that all generators must have obtained CRIS to become ICAP suppliers. MST Section 5.12.1 only requires that they comply with the applicable deliverability standards (of which there are none for “non-jurisdictional”

¹⁵ If any System Upgrade Facilities other than Local System Upgrade Facilities are determined to be necessary to accommodate proposed Small Generating Facility, it must be evaluated as a member of the next Class Year Study. Small Generating Facilities. OATT § 32.3.5.3.2.

¹⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (“Order No. 2003”), order on reh’g, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (“Order No. 2003-A”), order on reh’g, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004) at P7, order on reh’g, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC, 475 F.3d 1277 (D.C. Cir. 2007); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005) (“Order No. 2006”), order on reh’g, Order No. 2006-A, 113 FERC ¶ 31,195 (2005) (“Order No. 2006-A”) at PP 481 and 487.

facilities).¹⁷ As a result, IPPNY’s assertion that the NYISO’s treatment of “non-jurisdictional” facilities is inconsistent with the tariff is simply wrong. The current tariff provides no mechanism by which to subject such facilities to the NYISO Deliverability Interconnection Standard.

Finally, IPPNY’s contention that the proposed Transition Rule may adversely affect reliability is unsupported. As the NYISO noted in a February 7, 2005 compliance filing:

a limitation on the “deliverability” of the transmission system does not necessarily imply that reliability is jeopardized. The bulk power system can be operated within reliability criteria even if some generation cannot be “delivered” to some segment of load. Thus, the degree to which a transmission system is “deliverable” may have economic consequences for Market Participants but does not suggest any measure of its reliability.”¹⁸

Through operations, neither the NYISO nor the Connecting Transmission Owner will dispatch a unit if doing so will adversely affect reliability, regardless of a unit’s CRIS rights. In other words, being deemed “fully deliverable” or having a certain MW level of CRIS rights does not give the facility an absolute ability to inject that MW level; rather, it simply permits the unit to participate in the NYISO’s Installed Capacity Market.

B. NY DG’s Limited Protest and Request for Delayed Effective Date of the Transition Rule is Premised Upon an Apparent Misunderstanding of the Proposed Rule

NY DG contends that, “[t]he Transition Period should begin not on May 19, 2016, but upon the date on the [sic] October 1-15, 2016, flexible effective date so that the developers can

¹⁷ “In order to qualify as an Installed Capacity Supplier in the NYCA, each generator and merchant transmission facility interconnected to the New York State Transmission System must, commencing with the 2009 Summer Capability Period, have elected Capacity Resource Interconnection Service and been found deliverable, or must have been grandfathered as deliverable, pursuant to the applicable provisions of Attachment X, Attachment Z and Attachment S to the ISO OATT.” (emphasis added) MST § 5.12.1.

¹⁸ *New York Independent System Operator, Inc.*, Compliance Filing and Request for Further Extension of Time, Docket No. ER04-449-005 (Feb. 7, 2005) at 5.

enter the Class Year after the effective date of the entire changes proposed in the filing.”¹⁹ NY DG further contends that this is necessary in order to provide more than three days in which to exercise rights in order to obtain CRIS rights. However, the NYISO’s proposal in fact provides 60 days within which to exercise these rights - 60 days after the effective date of the Order.²⁰

NY DG also appears to misunderstand the Class Year entry requirements. BTM:NG Resources do not need to meet a regulatory milestone or have an Operating Committee-approved System Reliability Impact Study to enter a Class Year Deliverability Study unless they are subject to the NYISO’s interconnection procedures and required to enter a Class Year Study. Those requirements only apply to facilities that are subject to the full Class Year Study. A facility entering a Class Year Study solely for the purpose of requesting CRIS is subject only to an executed study agreement and a \$50,000 deposit.²¹ It is unclear how these requirements would be so complicated that BTM:NG Resources would require additional time to understand the requirements or the “risks and obligations” of participating in a Class Year Deliverability Study.

C. ReEnergy’s Request for Firm Effective Date is Inconsistent with the NYISO’s Experience with Deploying Major Software Upgrades

The March 17 Filing requested that the Commission accept the NYISO’s entire set of Tariff revisions within sixty days, *i.e.*, by May 17, 2016, and requested two separate effective dates: May 19, 2016 for the revisions proposed in OATT Sections 25, 30, and 32 (Attachments S, X, and Z) and for limited revisions proposed in MST Section 23.4.5.7.3; and a flexible effective date of no earlier than October 1, 2016, for the remaining Tariff revisions proposed in

¹⁹ NY DG Protest at 3.

²⁰ Proposed OATT § 25.9.3.3 and 25.9.3.4.1.

²¹ Proposed OATT § 30.8.1.

the NYISO's OATT and MST (the "Remaining Tariff Revisions").²² The NYISO proposed implementing the provisions in OATT Sections 25, 30 and 32 prior to the Remaining Tariff Revisions to allow the NYISO to undertake the administrative work necessary to enable potential BTM:NG Resources to participate in the ICAP market while simultaneously allowing the NYISO to develop the software and other processes required to integrate BTM:NG Resources in the NYISO's Energy, Capacity and Ancillary Services markets.

ReEnergy claims that the NYISO's request for a flexible effective date is "unacceptable and ... in complete disregard of the interests of the various parties that have been participating in the NYISO stakeholder process for two years,"²³ that it "continues the uncertainty for ReEnergy and likely other behind-the-meter facilities," and that "it is plausible that the effective date could be delayed through to the end of the year or, at worse [sic], beginning of 2017."²⁴ ReEnergy requests that the Commission order the Remaining Tariff Revisions to become effective no later than October 15, 2016.²⁵

The NYISO shares ReEnergy's desire for timely implementation of the Remaining Tariff Revisions. Those revisions, however, require significant changes to numerous software applications and to other processes employed by the NYISO. The NYISO continues to expect to integrate BTM:NG Resources in a software release scheduled for October, the first opportunity to deploy the BTM:NG initiative after software development and testing is complete. The exact date of that software deployment, however, cannot be finalized at this time.

²² The March 17 Filing stated that the NYISO expected to implement the remaining Tariff revisions on or before October 15, 2016.

²³ ReEnergy Holdings LLC April 7, 2016 Comments at 6.

²⁴ *Id.*

²⁵ *Id.*

The lack of a firm effective date, however, should not aggravate or prolong uncertainty as ReEnergy suggests. The NYISO advised stakeholders during the BTM:NG market design process, at least as early as September 2015, that it expected to conduct development and testing from April through October 2016 and targeted a fourth quarter 2016 deployment date,²⁶ a message the NYISO reiterated throughout the remainder of 2015.²⁷ The NYISO has provided additional status updates through its normal stakeholder processes, most recently on March 31, 2016, when it advised stakeholders that the Behind-the-Meter Net Generation initiative was on schedule for a fourth quarter 2016 deployment.²⁸

The NYISO understands that a firm effective date may provide a modicum of enhanced certainty for Market Participants; but as discussed above, implementation of the Remaining Tariff Revisions is dependent upon completion and testing of new market software, and a precise effective date will not be available until that software is ready for deployment. The NYISO has previously requested, and the Commission has granted, flexible effective dates in similar circumstances when the proposed tariff revisions required further development or coordination

²⁶ NYISO presentation to Joint Meeting of ICAP, Market Issue, and Price Responsive Load Working Groups, *Concepts for Behind-the-Meter Net Generation* (Sept. 4, 2015) at 65, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2015-09-04/BTMNG%20Market%20Concepts-ICAPWG-MIWG%209-4-15-final.pdf.

²⁷ See, e.g., NYISO presentation to Business Issues Committee, *Behind the Meter Net Generation Initiative: Market Design Concept* (Sept. 16, 2015) at 96, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2015-09-16/agenda%207%20pres%20BTMNG_BIC_091615.pdf; NYISO presentation to ICAP Working Group, *BTM:NG CRIS and Interconnection Tariff Revisions* (Oct. 26, 2015) at 18, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2015-10-26/BTM-NG%20CRIS%20Tariff%20Revisions%20ICAP%20MIWG_FINAL.pdf; NYISO Presentation to Business Issues Committee, *Behind the Meter Net Generation Initiative* (Dec. 9, 2015) at 12, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2015-12-09/agenda%208%20BTMNG%20BIC%20Presentation.pdf; NYISO Presentation to Management Committee, *Behind-the-Meter Net Generation Initiative* (Dec. 17, 2015) at 12, http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2015-12-17/Agenda%2006_BTMNG%20MC%20Presentation.pdf.

²⁸ NYISO presentation to the Budget and Priorities Working Group, *2016 Project Schedule Milestone Update* (Mar. 31, 2016) at 6, http://www.nyiso.com/public/webdocs/markets_operations/committees/mc_bpwg/meeting_materials/2016-03-31/2016%20Project%20Schedule%20Milestone%20Update.pdf.

after filing.²⁹ The NYISO respectfully requests that the Commission permit the flexibility required to implement the BTM:NG tariff revisions consistent with the timeline provided to stakeholders, and reject ReEnergy's request for a firm implementation date.

III. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission consider these comments and (i) reject IPPNY's Limited Protest with respect to the Transition Rule; (ii) reject NY DG Holdings' request for a single effective date for each tariff revision submitted in the March 17, 2016 filing; and (iii) permit the NYISO to have a flexible effective date, but which date shall be no sooner than October 1, 2016.

Respectfully submitted,

/s/ Gregory J. Campbell

Gregory J. Campbell, Attorney
Sara B. Keegan, Senior Attorney
Raymond Stalter, Director of Regulatory Affairs
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
(518) 356-6600
gcampbell@nyiso.com
skeegan@nyiso.com
rstalter@nyiso.com

April 22, 2016

cc: Michael Bardee Kathleen Schnorf
Anna Cochrane Jamie Simler
Kurt Longo Gary Will
Max Minzner
Daniel Nowak
Larry Parkinson
J. Arnold Quinn
Douglas Roe

²⁹ See, e.g., *New York Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,097, at P34 (2014); *New York Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,158, at 1 (2015); *New York Indep. Sys. Operator, Inc.*, Docket No. ER15-485-000, at 2 (Jan. 15, 2015) (unpublished letter order).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document 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 Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 22nd day of April 2016.

/s/ Joy A. Zimmerlin

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