

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

New York Independent System Operator, Inc.)

Docket No. ER13-869-000

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc., respectfully submits this answer to the:

(i) *Supplemental Comments by Energy Spectrum, Inc. and Riverbay Corporation* (“Supplemental RIP Comments”); (ii) the *Motion to Intervene and Comments of the Joint Responsible Interface Parties* (“Joint RIP Comments”); and (iii) several other comments that endorse the Joint RIP Comments but do not offer substantive arguments of their own² (collectively “the Comments”).

As is discussed below, the NYISO’s February 1, 2013 compliance filing (“Compliance Filing”) fully addressed the directives of the Commission’s December 10, 2012 order (“December Order”)³ in this proceeding. Its scope was properly limited to clarifying that resources that participate in the NYISO’s Installed Capacity (“ICAP”) Special Case Resource (“SCR”) program must be able to curtail Load that is being supplied by the transmission or distribution system when called upon by the NYISO. It is essential to the operational reliability of the grid that the NYISO be assured that SCR program participants have this ability in order to sell Capacity in the NYISO-administered ICAP market. The Commission should reject the Comments’ attempt to inject new issues that are beyond the scope of this compliance proceeding

¹ 18 C.F.R. 385.213 (2012)

² These include the pleadings filed by SourceOne Energy Solutions, the New York Energy Consumers Council, Consumer Power Advocates, the Durst Organization, Inc., and the Northeast Clean Heat and Power Initiative.

³ *Energy River Spectrum, Inc. and Riverbay Corporation*, 141 FERC ¶61,197 (2012) (Comm’r LaFleur and Comm’r Clark, dissenting).

and to delay action on the Compliance Filing. It should instead allow the NYISO to consider non-compliance-related issues through its normal stakeholder process, as it has already committed to do.⁴

The NYISO therefore renews its request⁵ that the Commission accept its proposed compliance tariff revisions, without condition or modification, by no later than April 2, 2013 so that they may be fully implemented in time for the Summer 2013 Capability Period.⁶

I. PROCEDURAL MATTERS

Rule 213 authorizes the NYISO to answer pleadings styled as comments as a matter of right.⁷ In addition, the Comments' requests for relief that are not contemplated by the December Order, including their proposed technical conference, are tantamount to motions, which the NYISO may also answer as of right.

To the extent that the Commission deems the Comments to be *de facto* protests, the NYISO respectfully asks that the Commission exercise its discretion to permit this answer. The Commission has frequently accepted answers to protests when they help to clarify complex issues or otherwise facilitate the Commission's decision-making.⁸ This answer should be

⁴ See Section II.D, below.

⁵ See Compliance Filing at 5.

⁶ Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO's Tariffs.

⁷ Most of the Comments were submitted on February 22. The NYISO therefore believes that this answer is timely under Rule 213. To the extent that the Commission concludes that this answer is partially or wholly untimely because the Joint RIP Comments were submitted on February 19, the NYISO respectfully requests that the Commission accept it two days out of time.

⁸ See, e.g., *S. Cal. 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"); *N.Y. Indep. Sys. 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); *PJM*

accepted because it explains that the issues raised by the Comments are both outside the scope of this compliance proceeding and soon to be addressed through the NYISO stakeholder process.

II. ANSWER

A. The Compliance Filing Fully Addresses the Directives of the December Order and Must Be Accepted By April 2 for Reliability Reasons

Paragraph 52 of the December Order directed the NYISO to “revise the Services Tariff to reflect more clearly the requirements of Technical Bulletin 217.” Technical Bulletin 217 was intended to clarify: (i) the metered load reporting requirements for SCR baseline calculations; and (ii) the eligibility requirement that all SCRs - including those using Local Generators - be capable of interrupting load that is being served from the electric system at the NYISO’s direction. As the NYISO has previously explained, this clarification was necessary given recent changes to its methodology for determining Average Coincident Load (“ACL”) and Provisional ACL.⁹

The Compliance Filing therefore proposed compliance tariff revisions that “reflect more clearly the requirements of Technical Bulletin 217.” They would eliminate the tariff ambiguities identified in the December Order by clarifying that all SCRs, regardless of whether they function by curtailing load, shifting load to a Local Generator, or some combination of the two, must be able to meet the fundamental requirement to reduce load for four hours at the direction of the NYISO. The Compliance Filing accomplishes this by revising the tariff definitions of “Average Coincident Load,” “Provisional Average Coincident Load,” and “Special Case Resource,” and related language in section 5.12.11.1 of the Services Tariff, to the limited extent necessary to

Interconnection, L.L.C., 132 FERC ¶ 61,207 at P 44 (2010) (accepting answers to answers and protests because they assisted in the Commission’s decision-making process).

⁹ *Answer and Request for Expedited Action of the New York Independent System Operator, Inc.* at 3-5, Docket No. EL12-56-000 (filed April 19, 2012).

incorporate the requirements of Technical Bulletin 217. The proposed compliance revisions are straightforward and complete. They do exactly what the December Order required and nothing more.

As the attached affidavit of Wesley J. Yeomans, the Vice President of Operations for the NYISO, emphasizes, the NYISO's ICAP SCR program is a reliability based program that pays Responsible Interface Parties ("RIPs") a capacity payment in return for their commitment to curtail load when directed by the NYISO.¹⁰ It is a RIP's ability to reduce demand when called upon that creates the reliability benefit that warrants compensation under the ICAP/SCR program. Mr. Yeomans also explains that it is imperative that the Compliance Filing be accepted by April 2 so that it may be implemented by the beginning of the Summer Capability Period (*i.e.*, by May 1, 2013).¹¹ By way of comparison, "the NYISO deployed demand response to address operational reliability on six separate days" during the 2012 Summer Capability Period.¹² The first such event occurred in late May.¹³

If the Compliance Filing's tariff revisions are not implemented for the start of the Summer Capability Period, which begins May 1, the NYISO may well face similar emergencies without any assurance that all SCR capacity megawatts will actually be able to deliver the expected load reductions during these reliability events. The NYISO's customers would also continue to be required to compensate resources that "purport to provide demand response yet do not and can not reduce system load."¹⁴ In short, unless the compliance tariff revisions are in

¹⁰ See Attached Affidavit of Wesley J. Yeomans at PP 5-6.

¹¹ *Id.* at PP 7-8.

¹² *Id.* at P 7.

¹³ *Id.*

¹⁴ December Order Comm'r LaFleur and Comm'r Clark Dissent at 4.

place by May 1, the integrity of the NYISO's ICAP SCR program will be undermined, consumers will have paid for SCR capacity that was not available and reliability may be harmed.

B. The Commenters Should Not Be Allowed to Improperly Expand the Scope of this Compliance Proceeding

Commission precedent is clear that issues unrelated to compliance with Commission directives have no place in compliance proceedings.¹⁵ The December Order very clearly directed the NYISO to incorporate the requirements of Technical Bulletin 217 into its tariffs. It neither instructed, nor authorized, the NYISO to go beyond that single mandate. It did not empower the NYISO to address other alleged tariff ambiguities and inconsistencies,¹⁶ let alone all of them as Commenters apparently desire.¹⁷ Nor did it direct the NYISO to make other potential enhancements to its market rules,¹⁸ or metering requirements for Local Generators.¹⁹ The Commission should therefore reject Commenters' attempts to expand the scope of this compliance proceeding to encompass the "other issues" that they raise.

¹⁵ See, e.g., *Iberdrola Renewables, Inc., et al. v. Bonneville Power Administration*, 141 FERC ¶ 61,234 at P 60 (2012) (finding that a determination did not need to be reached on concerns that were "outside the scope of this Compliance Filing"); *High Point Gas Transmission, LLC*, 140 FERC ¶ 61,259, at P 26 (2012) (stating that "[t]he only issue on compliance is whether the filing complies with the directives of the Commission's order" (internal citations omitted)); *Midwest Independent Transmission System Operator, Inc.*, 141 FERC ¶61,128 at P 92 (2012) (finding that certain arguments were "beyond the scope of this compliance proceeding" stating that the issues raised were "not germane to whether ...[the] proposed Tariff revisions comply with the Commission's requirements"); *PJM Interconnection, L.L.C.*, 137 FERC ¶61,216 at P 93 (2011) (rejecting a request for changes in PJM's tariff where such requested changes were "outside the scope of compliance" with the Commission's order").

¹⁶ See, e.g., Joint RIP Comments at 7-9; Supplemental RIP Comments at 2-4.

¹⁷ See, e.g., Joint RIP Comments at 4; Supplemental RIP Comments at 2-3.

¹⁸ See, e.g., Joint RIP Comments at 8; Supplemental RIP Comments at 3-4.

¹⁹ See, e.g., Joint RIP Comments at 7-8.

More specifically, this proceeding is not the proper forum for a general “[d]iscussion of the role of baseload DG and energy efficiency in contributing to system adequacy.”²⁰ It is not the appropriate procedural vehicle for launching a far-ranging technical conference to explore how distributed generation, or energy efficiency, resources “are to be incorporated into the markets,”²¹ or for analyzing “*all* issues surrounding the participation of onsite generation resources in the SCR Program.....”²² Similarly, it would be inappropriate to use a compliance proceeding to impose new mandates that the NYISO “be required to amend the tariff to address local generation, capacity, and load”²³ or to explore possible “SCR participation strategies to meet reliability needs.”²⁴

Contrary to Commenters’ claims, the Compliance Filing includes all of the tariff revisions needed to respond to the December Order. There is no need to make, nor does the NYISO have authority to propose,²⁵ the sweeping additional revisions sought by Commenters. The December Order certainly does not require changes to core definitions (*e.g.*, “Load”)²⁶ that are used throughout the NYISO’s tariffs. Changes to such definitions could have implications that extend far beyond demand side resource issues, let alone the scope of this Compliance Filing. Even if it were permissible to make such changes in this proceeding it would be unwise given the potential impacts and the lack of a record concerning them.

²⁰ Joint RIP Comments at 3.

²¹ *See* Supplemental RIP Comments at 5.

²² Joint RIP Comments at 9 (emphasis added).

²³ Supplemental RIP Comments at 5.

²⁴ Joint RIP Comments at 4.

²⁵ *See* ISO Agreement §19.01 (requiring that any non-compliance filing changes to the Services Tariff, OATT and ISO Agreement receive Management Committee vote and NYISO Board of Director’s approval before filing under FPA Section 205”).

²⁶ Supplemental RIP Comments at 3.

The Commenters' numerous references to past stakeholder discussions of demand response programs are likewise beyond the scope of this compliance proceeding. The snippets of information they have selected from stakeholder meetings that are years, or in some cases more than a decade old, are not relevant to compliance with the December Order. Even their relevance as "legislative history" is questionable given the expanding role that demand side resources have played, and the increase in understanding of the issues associated with them, over the years.²⁷ In any event, if the Commenters objected to the scope or content of the December Order's compliance mandate they should have sought rehearing. They did not do so and it is therefore too late for them to try to expand this proceeding now.

C. There Is No Reason to Delay Action on the Compliance Filing

The Commenters ask that the Commission delay action on the Compliance Filing until after the "other issues" that they have raised have been addressed.²⁸ As was explained above, however, these clarifications need to be in place for the Summer Capability Period, both to maintain reliability during periods of reserve shortages and other system emergencies, and to prevent customers from paying for load reduction capability that some resources cannot actually provide. None of the concerns raised by the Comments justify delaying action on the Compliance Filing. Even if the Commission were to conclude that the Comments have merit, the issues that they raise could be addressed after the compliance revisions are in place.

²⁷ It should also be noted that Commenters' selected excerpts are taken from presentations at stakeholder meetings ranging from 2005 to 2013, during which time many provisions of the NYISO's programs have changed.

²⁸ See, e.g., Supplemental RIPs at 2 (stating that two issues have been "left out of the NYISO Compliance Filing or were not addressed in the NYISO Compliance Filing and that need to be addressed and resolved by the NYISO"); Joint RIPs at 1 (asking that "these additional issues be addressed by FERC and NYISO before implementation can proceed").

The Comments claim that “[p]otentially hundreds of megawatts” of distributed generation are being “ignored” and suggest that this is a basis for urgent Commission action. They overlook the fact that there are a many utility-administered programs in New York State that make compensation available to distributed generation. The Commission should therefore not conclude that distributed generation that cannot participate in the NYISO’s ICAP SCR program will be “ignored” or that the contributions that such resources may make to reliability will not be recognized in other programs.

D. There is No Reason to Require the NYISO to Address Commenters’ Issues in Status Reports

Commenters ask that the Commission direct the NYISO to “report on the status of stakeholder discussions on baseload DG, direct metering of SCR generators, and SCR generation in excess of host load” in its semi-annual demand response informational reports “commencing with the June 2013 report.”²⁹ There is no need for the Commission to impose such a requirement. The NYISO recently informed its stakeholders that it was committed to exploring additional (and non-compliance related) issues regarding Local Generators, including the question of whether they may sell load reduction capability in excess of their baseline load levels. The NYISO indicated that it intended to initiate these discussions during the first half of calendar year 2013. Thus, the discussions that commenters seek will soon be underway. There would be little purpose in requiring the NYISO to prepare formal reports describing those discussions given that Commission staff may already attend them if it desires to do so.

²⁹ Joint RIP Comments at 9.

III. CONCLUSION

For the reasons specified above, the NYISO respectfully renews its request that the Commission issue an order accepting the Compliance Filing, without condition or modification, by April 2 and permit the NYISO to consider the non-compliance related issues raised by the Comments through its normal stakeholder process.

Respectfully submitted,

/s/ David M. Allen

David M. Allen
Counsel to the
New York Independent System Operator, Inc.

March 8, 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 (2012).

Dated at Washington, D.C. this 8th day of March 2013.

/s/ Catherine Karimi

Catherine Karimi
Hunton & Williams LLP
2200 Pennsylvania Ave, NW
Washington, DC 20037
Tel: (202) 955-1500
Fax: (202) 778-2201
E-mail: ckarimi@hunton.com