

184 FERC ¶ 61,038  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

July 17, 2023

In Reply Refer To:  
New York Independent System Operator, Inc.  
Docket No. ER21-502-006

New York Independent System Operator, Inc.  
10 Krey Blvd.  
Rensselaer, NY 12144

Attention: Garrett E. Bissel, Senior Attorney  
New York Independent System Operator, Inc.

Dear Garrett E. Bissel:

1. On June 2, 2023, the New York Independent System Operator, Inc. (NYISO) submitted a compliance filing in response to the directives of a May 19, 2023 Commission order<sup>1</sup> requiring NYISO to prospectively utilize a 17-year amortization period for the remainder of the 2021-2025 Demand Curve reset period (2021-2025 DCR). Specifically, NYISO proposes revisions to its Market Administration and Control Area Services Tariff (Services Tariff)<sup>2</sup> to update demand curves in the Installed Capacity (ICAP) market (ICAP Demand Curves) in the 2021-2025 DCR. NYISO states that it will implement the revised ICAP Demand Curves for the upcoming July 2023 ICAP spot market auction.<sup>3</sup> As explained below, we find that NYISO's compliance filing complies with the directives in the May 19 Order and we accept NYISO's proposed revisions, to be effective June 9, 2023, as requested.

2. On November 30, 2020, as amended February 12, 2021, NYISO filed proposed revisions to the ICAP Demand Curves for the 2021-2025 DCR that adopted a 17-year amortization period. NYISO explained that its primary reason for proposing the 17-year amortization period was New York State's recent enactment of the Climate Leadership

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<sup>1</sup> *New York Independent System Operator, Inc.*, 183 FERC ¶ 61,130 (2023) (May 19 Order).

<sup>2</sup> *New York Independent System Operator, Inc.*, NYISO Tariffs, NYISO MST, § 5.14 (Installed Capacity Spot Market Auction and Installed Capacity Supplier Deficiencies) (37.0.0).

<sup>3</sup> Transmittal at 2.

and Community Protection Act (CLCPA), which requires that “the statewide electrical system demand will be zero-emissions” by January 1, 2040.<sup>4</sup> NYISO further explained that the proposed 17-year amortization period represented the average period of years between the beginning of each Capability Year covered by the 2021-2025 DCR and the CLCPA’s January 1, 2040 compliance deadline.<sup>5</sup>

3. On April 9, 2021, the Commission issued an order accepting in part, subject to condition, NYISO’s proposed revisions to its Services Tariff. The Commission rejected NYISO’s proposed 17-year amortization period and directed NYISO to submit a compliance filing maintaining an amortization period of 20 years for the 2021-2025 DCR.<sup>6</sup> The Independent Power Producers of New York, Inc. (IPPNY) sought rehearing of the April 2021 Order’s finding that the amortization period for the 2021-2025 DCR should be set at 20 years.<sup>7</sup> Rehearing of the April 2021 Order was denied by operation of law.<sup>8</sup>

4. IPPNY subsequently appealed the Commission’s decision to the United States Court of Appeals for the District of Columbia (D.C. Circuit). On August 9, 2022, the D.C. Circuit issued a decision granting IPPNY’s appeal and vacating and remanding the April 2021 Order to the Commission for further proceedings consistent with its judgment.<sup>9</sup> On December 16, 2022, the Commission issued an order on remand<sup>10</sup> in response to the D.C. Circuit’s decision, which affirmed, with further explanation, its rejection of NYISO’s proposed 17-year amortization period. On January 17, 2023, IPPNY filed a request for rehearing of the Remand Order. In the May 19 Order, the Commission

<sup>4</sup> NYISO Filing, Docket No. ER21-502-000 at 51 & n.299 (citing NYISO Final Recommendations at 27-29; Consultant Final Report at 61-63; and Analysis Group Aff. at P 25 & PP 68-69); CLCPA, N.Y. Statutes, Chapter 106 of the laws of 2019 (Jul. 18, 2019) (CLCPA); N.Y. PUB. SERV. Law § 66-p(2).

<sup>5</sup> NYISO Filing, Docket No. ER21-502-000 at 51 (citing NYISO Staff Final Recommendations at 26-28; NYISO Consultant Final Report at 62, 65-67; Analysis Group Aff. ¶ 69, 75).

<sup>6</sup> *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,012, at P 161 (2021) (April 2021 Order).

<sup>7</sup> IPPNY Rehearing Request at 1-2.

<sup>8</sup> *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 62,159 (2021).

<sup>9</sup> *Indep. Power Producers of N.Y., Inc.*, No. 21-1166, 2022 WL 3210362 (D.C. Cir. Aug. 9, 2022) (IPPNY).

<sup>10</sup> *N.Y. Indep. Sys. Operator, Inc.* 181 FERC ¶ 61,227, at PP 25-34 (2022) (Remand Order).

addressed IPPNY's arguments on rehearing, set aside the Remand Order, and directed NYISO to revise section 5.14.1.2 of its Services Tariff to implement a 17-year amortization period when calculating the net annual cost of the hypothetical peaking plant used to define the ICAP Demand Curves in the 2021-2025 DCR.<sup>11</sup>

5. In its transmittal here, NYISO explains that revising the ICAP Demand Curves to reflect a 17-year amortization period as directed in the May 19 Order impacts: (1) the localized levelized embedded cost of the peaking plant<sup>12</sup> used in establishing each ICAP Demand Curve; (2) the resulting reference point value for each ICAP Demand Curve; and (3) the resulting maximum clearing price value for each ICAP Demand Curve. NYISO provides a table in its transmittal that reflects the revised parameter values for its ICAP Demand Curves.<sup>13</sup> NYISO adds that it has posted on its website a revised spreadsheet used to calculate the revised parameter values reflecting a 17-year amortization period for each ICAP Demand Curve.<sup>14</sup>

6. In compliance with the May 19 Order, NYISO proposes to: (1) include the revised ICAP Demand Curve parameter values for the 2023/2024 Capability Year in the table provided in section 5.14.1.2 of NYISO's Services Tariff; and (2) revise the peaking plant gross cost values set forth in section 5.14.1.2.2.3 of NYISO's Services Tariff to reflect use of a 17-year amortization period beginning with the July 2023 spot market auction.<sup>15</sup> NYISO requests that the Commission accept its compliance filing and establish a June 9, 2023 effective date for the proposed revisions submitted as part of the filing. NYISO states that it intends to implement the revised 2023/2024 Capability Year ICAP Demand Curves for the July 2023 ICAP spot market auction.<sup>16</sup>

7. Notice of NYISO's filing was published in the *Federal Register*, 88 Fed. Reg. 37,527 (Jun. 8, 2023) with interventions and protests due on or before June 16, 2023.

8. On June 16, 2023, the New York State Public Service Commission (New York Commission) filed comments. On June 23, 2023, IPPNY filed an answer to the New York Commission's comments.

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<sup>11</sup> May 19 Order, 183 FERC ¶ 61,130 at PP 31-37.

<sup>12</sup> NYISO states that the Service Tariff refers to this as "peaking plant gross cost." Transmittal at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 5.

9. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>17</sup> answers to protests and answers are prohibited unless otherwise ordered by the decisional authority. We will accept IPPNY's answer because it has provided information that assisted us in our decision-making process.

10. The New York Commission states that the May 19 Order wrongly sets aside the Commission's prior determinations and that it intends to seek rehearing of the May 19 Order.<sup>18</sup> The New York Commission asserts that compliance with the Commission's directive in the May 19 Order, i.e., shortening the amortization period to 17 years, has significant financial consequences for New York ratepayers. The New York Commission states that, although it had previously stated that a shortened amortization period could cause an increase in annual unhedged capacity costs of \$100 million to New York ratepayers, that figure was an understatement. The New York Commission estimates that accepting NYISO's compliance filing may increase unhedged capacity costs for New York ratepayers by \$225 million annually, or approximately \$400 million for the period of July 1, 2023 through April 30, 2025, i.e., the remainder of this DCR.<sup>19</sup>

11. The New York Commission further objects that the May 19 Order does not require NYISO to revise its amortization period subject to refund. The New York Commission submits that the Commission should wait to act on NYISO's compliance filing until it decides the merits of any requests for rehearing of the May 19 Order in order to protect New York ratepayers from unjust and unreasonable charges while the Commission considers the May 19 Order on rehearing.<sup>20</sup>

12. In its answer, IPPNY argues that the New York Commission's comments are both beyond the scope of this proceeding and a collateral attack on the May 19 Order. IPPNY contends that protests of compliance filings must be limited to whether the filing meets the Commission's directives. IPPNY also points out that the New York Commission does not argue that NYISO's compliance filing fails to comply with the May 19 Order.<sup>21</sup> Rather, IPPNY asserts, the New York Commission's comments recognize that NYISO's compliance filing proposes to comply exactly as directed by the Commission.

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<sup>17</sup> 18 C.F.R. §385.213(a)(2) (2022).

<sup>18</sup> New York Commission Comments at 1-2. Subsequent to filing its comments in this proceeding, the New York Commission filed a request for rehearing of the May 19 Order in Docket No. ER21-502-007.

<sup>19</sup> New York Commission Comments at 2-3, Evans Aff. ¶ 7.

<sup>20</sup> NYPSC Comments at 3.

<sup>21</sup> IPPNY Answer at 7 (citing *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at PP 303-304 (2016) (rejecting arguments as beyond the scope of the compliance filing,

13. IPPNY contends that the New York Commission’s request that the Commission pause action on NYISO’s compliance filing contradicts the May 19 Order’s directive to implement a 17-year amortization period for the remainder of the 2021-2025 DCR “as soon as reasonably practicable in consideration of the applicable auction timelines, i.e., by the date of the next possible auction.”<sup>22</sup> IPPNY states that the appropriate procedure to challenge the May 19 Order is through a request for rehearing. IPPNY adds that if the Commission deems the New York Commission’s request to pause implementation of the 17-year amortization period to be a motion for a stay, the request fails to meet—and the New York Commission does not allege that it meets—such requirements.<sup>23</sup>

14. We find that NYISO’s compliance filing complies with the directives in the May 19 Order. Accordingly, we accept NYISO’s filing, to be effective June 9, 2023.

15. As the Commission has explained, the Commission’s role when reviewing a compliance filing is limited to determining whether the filing complies with the directives in the order that required submission of the compliance filing.<sup>24</sup> Having reviewed NYISO’s compliance filing, we find that NYISO followed the May 19 Order directives<sup>25</sup> and has revised its Services Tariff accordingly. The New York Commission’s challenges

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“which is limited to whether PJM complied with the directives in the” underlying order); *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 34 (2010) (“Protests to compliance filings are limited to whether the filing meets the Commission’s compliance directive and cannot properly function as late rehearings of the initial order.”); *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,147, at P 15 (2007) (rejecting certain protests to a compliance filing that should have been raised as a request for rehearing).

<sup>22</sup> IPPNY Answer at 7 (citing May 19 Order, 183 FERC ¶ 61,130 at P 31).

<sup>23</sup> *Id.* at 8 -10 & n.33 (arguing the New York Commission has not met the requirements for granting stay of a Commission order (citing *L.S. Starrett Co.*, 132 FERC ¶ 61,036, at P 9 (2010); *Am. Wind Energy Ass’n*, 168 FERC ¶ 61,006, at P 23 (2019); *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,236, at P 8 (2016); *Transcon. Gas PipeLine Co., LLC*, 150 FERC ¶ 61,183, at P 9 (2015); *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022, at P 14 (2012))).

<sup>24</sup> *See, e.g. ISO New England Inc.*, 183 FERC ¶ 61,059, at P 18 & n.30 (2023) (“The only question before the Commission in this proceeding is whether ISO-NE’s filing complies with the directives of the September 2022 Order”) (collecting cases); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at PP 303–304 (rejecting arguments as beyond the scope of the compliance filing, “which is limited to whether PJM complied with the directives in the” underlying order).

<sup>25</sup> *See* May 19 Order, 183 FERC ¶ 61,130 at P 31, ordering para. (B). *See supra* P 5 (summarizing NYISO’s Tariff revisions reflecting the revised amortization rate).

to the May 19 Order that directed the compliance filing are essentially inappropriate requests for rehearing of the May 19 Order.<sup>26</sup> We dismiss the New York Commission's arguments concerning alternative amortization periods as beyond the scope of this proceeding.<sup>27</sup> Further, having found the 17-year amortization period just and reasonable, we need not defer action on compliance. We agree with IPPNY that the New York Commission's request to delay implementation of a 17-year amortization period contradicts the Commission's directive to implement a 17-year amortization period for the remainder of the 2021-2025 DCR "as soon as reasonably practicable."<sup>28</sup> NYISO has complied with this directive by promptly submitting a compliance filing that will implement a 17-year amortization period, starting with the July 2023 ICAP spot market auction.

By direction of the Commission. Commissioner Christie is dissenting with a separate statement attached.

Debbie-Anne A. Reese,  
Deputy Secretary.

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<sup>26</sup> *See id.* PP 31, 34, 37.

<sup>27</sup> *See, e.g., Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,147 at P 15 (rejecting certain protests to a compliance filing that should have been raised as a request for rehearing). We also reject as beyond the scope of compliance the affidavit that the New York Commission filed to support its arguments challenging the May 19 Order.

<sup>28</sup> IPPNY Answer at 7 (citing May 19 Order, 183 FERC ¶ 61,130 at P 31).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER21-502-006

(Issued July 17, 2023)

CHRISTIE, Commissioner, *dissenting*:

I dissent from today's order as I also did from the Commission's May 19, 2023 order (May 19 Order).<sup>29</sup> The New York State Public Service Commission and Consumer Stakeholders each have filed requests for rehearing of the May 19 Order which are pending before the Commission and, as such, I do not comment further.

For these reasons, I respectfully dissent.

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Mark C. Christie  
Commissioner

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<sup>29</sup> *New York Independent System Operator, Inc.*, 183 FERC ¶ 61,130 (2023) (Christie, Comm'r, dissenting) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-dissent-nyiso-demand-curve-reset-amortization-period-er21>).