

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

Innovative Power LLC

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Docket No. ER15-1926-000

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments in the above-captioned proceeding. The NYISO requests that the Commission consider these comments in its evaluation of whether to grant the relief requested by Innovative Power LLC (“Innovative”).

I. Background

On June 16, 2015, Innovative, a Responsible Interface Party² (“RIP”) participating in the NYISO’s Installed Capacity (“ICAP”) Market, submitted a request for waiver of a tariff-imposed deadline to submit Special Case Resource (“SCR”) performance data to the NYISO. Granting such request would allow the NYISO to accept and process the data in accordance with

¹ 18 C.F.R. §§ 385.212 and 385.213 (2015).

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

the NYISO's tariffs and applicable manuals. Innoventive specifically requests waiver of the requirement in section 5.12.11.1 of the Market Administration and Control Area Services Tariff ("Services Tariff") that requires RIPS to submit performance data to the NYISO within seventy-five (75) days of an SCR event or test ("Submission Period"), and section 4.4.7 of the ICAP Manual.

The NYISO's SCR program is a reliability-based demand response program that is activated in response to: (i) a forecasted reserves shortage, (ii) an ISO declared Major Emergency state, and (iii) in response to a request for load relief purposes, or as the result of a local reliability rule. In addition to activation for such events, the NYISO schedules two performance tests in each Capability Period to confirm the ability of each SCR to meet its capacity obligation.³ RIPS act as aggregators of individual SCRs to facilitate the SCR's participation in the program. The NYISO did not activate its SCR program for an event in the Winter 2014-2015 Capability Period. The only activation of SCRs during the Capability Period was for the performance test conducted on March 3, 2015.

Under the Services Tariff a SCR is obligated to perform in all events and required tests provided that the NYISO gives the appropriate day-ahead and intra-day notifications.⁴ Events and tests meeting these notification requirements are considered "mandatory," and the activated SCRs are required to provide the NYISO with their committed demand reductions. After the NYISO activates a mandatory event or test, Section 5.12.11.1 of the Services Tariff requires

³ RIPS have the option for a SCR to use its performance in a mandatory event hour in lieu of performance in the first performance test. Therefore, if a SCR has performed in a mandatory event, the SCR may use its performance in the event as a proxy for its test value and be relieved of the requirement to perform in the first performance test. The SCR has the obligation to perform in the first performance test in the absence of a proxy test value, and resources that meet the appropriate operational characteristics are required to perform in the second performance test.

⁴ NYISO Services Tariff § 5.12.11.1.

RIPs to submit, within the 75-day Submission Period, certain performance data⁵ for each SCR that was required to perform. If the performance data of a SCR is not submitted within the Submission Period, the Services Tariff directs the NYISO to attribute zero performance to that resource for the event or test.⁶ In order to meet its tariff obligation, Innoventive was required to submit performance data for the March 3 test by May 17, 2015. Innoventive did not submit the required data by that date.

Non-performance of a SCR, attributable either to operational failure or to a failure to submit the required data, results in certain tariff imposed consequences. Applicable to Innoventive's waiver request, non-performance for an event or test impacts the unforced capacity the SCR is able to sell in the ICAP market, and may result in ICAP shortfalls and related deficiency charges pursuant to section 5.14 of the Services Tariff. The effect of such consequences is particularly acute in a Capability Period, such as the Winter 2014-2015 Capability Period at issue in Innoventive's request, when the NYISO did not activate a SCR event, leaving the resource's performance for the entire Capability Period to be measured over only a single test hour.

II. Motion to Intervene

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity and ancillary services in New York State. The NYISO further administers various

⁵ Section 4.12.4.8 of the NYISO's ICAP Manual requires each SCR to report performance data for all hours during a mandatory SCR event and any required performance tests. A SCR's performance data is the hourly interval meter data for the SCR over the course of the event or test.

⁶ NYISO Services Tariff § 5.12.11.1.

demand response programs in each of those wholesale markets pursuant to Commission-approved tariffs. In this proceeding, Innoventive is requesting a waiver of a requirement of the SCR program established by the NYISO Services Tariff. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all rights of a party.

III. Comments

The NYISO understands Innoventive's waiver request as seeking relief from the requirement in section 5.12.11.1 of the NYISO's Services tariff to submit the required resource performance data within 75 days of the March 3 performance test.

The Commission evaluates such a waiver request based on the specific facts and circumstances of the request,⁷ and upon evaluation of a four-part test: (i) whether the requestor has acted in good faith; (ii) whether the request is of limited scope; (iii) whether the request will remedy a concrete problem; and (iv) whether the waiver, if granted, will have undesirable consequences such as harming third parties.⁸

Because the Commission's evaluation of a waiver is highly dependent on the particulars of each request, the Commission has recognized that the granting of one waiver request is not precedent for granting future requests.⁹ It is highly important that the Commission continue to

⁷ See, e.g., *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060, at P 17 (2013).

⁸ *New York Power Authority*, 139 FERC ¶ 61,157, at P 28 (2012); *Air Energy TCI Inc.*, 143 FERC ¶ 61,172, at P 16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P 10 (2010).

⁹ See, *New York Power Authority*, 139 FERC ¶ 61,157 at P 30 (after finding the requested waiver sufficiently limited to the specific facts presented, the Commission stated that granting the waiver "does not constitute precedent for allowing market participants to avoid these or any other conditions set forth in the Services Tariff.").

reinforce the importance of tariff deadlines that enhance certainty and assist the NYISO in administering open and competitive markets.

Based upon (i) the NYISO's review of Innoventive's waiver request, (ii) the facts known to the NYISO at this time, (iii) the potential for adverse market impacts, and (iv) Commission guidance on waiver requests, the NYISO does not oppose Innoventive's waiver request. The NYISO defers to the Commission on whether Innoventive has met its burden of proof, but notes that the facts known to the NYISO at this time corroborate those presented in Innoventive's waiver request.

On the morning of Monday, May 18, 2015, one day following the close of the Submission Period, Innoventive advised the NYISO that it failed to submit the appropriate performance data in accordance with the Services Tariff. In an initial phone call, Innoventive explained that its error was due to an administrative oversight, and that all data was available and properly formatted for submission. Innoventive followed up its phone call with an email containing the data on that same day. In the course of further communications, and as stated in its request for waiver, an investigation of the error by Innoventive revealed that an Innoventive employee entered an incorrect date on a calendar. Innoventive has explained to the NYISO that it quickly established a process for additional oversight of the submission processes and conducted additional training on the NYISO's rules with the appropriate employees and provided NYISO with evidence of such changes.

Although Innoventive seeks only a limited waiver of a filing deadline, the NYISO is concerned that a waiver in this proceeding may raise questions regarding the applicability of the data reporting requirements to other RIPS. While the 75-day deadline is administrative, it is nonetheless necessary for the NYISO to receive timely performance data from RIPS in order to

process and review data from over 4,000 SCRs participating in the program. Timeliness helps ensure certainty and transparency, as the data submitted by RIPs is used, among other reasons, to calculate Installed Capacity shortfalls (*i.e.*, when a SCR provided less capacity than it committed to provide), performance factors used to determine how much capacity a SCR is eligible to sell in future capability periods, and to prepare for upcoming Capability Periods.

Offsetting the NYISO's desire for strict adherence to the submission deadline in the instant waiver request is the potential for an undesirable impact to the NYISO's capacity market. If the SCRs Innoventive brings to market were to stop participating in the SCR program, the NYISO would expect increased capacity costs which would be borne by New York State consumers.¹⁰ The NYISO agrees with the cost estimate provided by Innoventive in its request for waiver. It is important to note that this potential market impact is largely due to the combined effect of two separate factors: (i) Innoventive failed to submit performance data for its entire SCR portfolio, and (ii) there was only one hour of data upon which to calculate SCR performance for the Capability Period. Potential market impacts, if the Commission were to deny Innoventive's request, could be particularly severe due to the specific facts and circumstances of this matter.

The NYISO's ability to implement the waiver, if granted, is enhanced by Innoventive's prompt discovery of its failure to submit data and subsequent waiver request to the Commission. Following the close of the Winter 2014-2015 Capability Period, NYISO staff began its process of preparing for the Winter 2015-2016 Capability Period, which includes reviewing data and completing the various calculations necessary from all SCRs. If Innoventive had not promptly

¹⁰ If the resources were to remain in the market at a derated capacity, there is not likely to be a significant market impact. The NYISO has received no indication as to whether the affected resources would remain in, or leave, the market.

recognized its mistake and brought it to the NYISO's and the Commission's attention, granting a waiver could result in undesirable outcomes such as recalculating resource performance factors after the NYISO had begun preparing for the Winter 2015-2016 Capability Period. If the Commission grants the relief requested by Innoventive by July 17, the NYISO will have sufficient time to: (i) process and review the data; (ii) complete all required calculations prior to the seasonal set-up for the Winter 2015-2016 Capability Period; and (iii) to post performance factors for the upcoming Capability Period by the August 1 deadline in the NYISO's ICAP Event Calendar.

Based on the facts known to the NYISO at this time, the potential for undesirable market impacts, and the promptness of Innoventive's discovery and notification of its error, the NYISO does not oppose Innoventive's request for waiver.

IV. Communications and Correspondence

All communications and service with regard to this filing should be directed to:

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V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully request that the Commission (i) grant this motion to intervene, and (ii) consider these comments in making its decision on Innoventive's request.

Respectfully submitted,

/s/ Gregory J. Campbell

Gregory J. Campbell

Counsel for

New York Independent System Operator, Inc.

June 26, 2015

cc: Michael Bardee
Gregory Berson
Anna Cochrane
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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 26th day of June, 2015.

By: /s/ John C. Cutting

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