UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York State Public Service Commission, New York Power Authority, Long Island Power Authority, New York State Energy Research and Development Authority, City of New York, Advanced Energy Management Alliance, and Natural Resources Defense Council	)	**Docket No. EL16-92-00[ ]**
v.	)	
New York Independent System Operator, Inc.	)	

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

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO") requests clarification of a single sentence in the Commission's February 3, 2017 *Order Granting Complaint in Part and Denying in Part* in the above-captioned proceeding (the "February 3 Order").[2] Specifically, the February 3 Order stated that "[w]hile the Commission has allowed for mitigation redeterminations before a resource enters the market, the Commission has not allowed for such redeterminations after the resource enters the market."[3] The NYISO seeks clarification that this statement is not intended to contradict or alter the retesting provisions of the NYISO's buyer-side capacity market power mitigation rules ("BSM Rules") that are set forth in the Market Administration and Control Area Services Tariff ("Services Tariff").[4] It seems unlikely that the Commission intended for this

[1] 18 C.F.R. §385.212 (2016).

[2] *N.Y. State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137 (2017).

[3] February 3 Order at P 35.

[4] The BSM Rules are set forth in Services Tariff Section 23.4.5.7, *et seq*.

statement to have such an effect but the NYISO is requesting clarification to avoid any possible future misinterpretation of the February 3 Order.

I. COMMUNICATIONS

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs
* Gloria Kavanah, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6103
Fax: (518) 356-7678
rfernandez@nyiso.com
rstalter@nyiso.com
gkavanah@nyiso.com

* Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue
Washington, D.C. 20037
Tel: (202) 955-1588
Fax: (202) 778-2201
tmurphy@hunton.com

* Designated for receipt of service

II. BACKGROUND

This proceeding began with a complaint filed by the New York State Public Service Commission and other parties on June 24, 2016 ("Complaint").[5] The Complaint sought to have the Commission direct the modification of the existing BSM Rules in order to exempt all Special Case Resources ("SCRs"),[6] including SCRs previously determined to be subject to Offer Floor mitigation. The February 3 Order granted the Complaint as to new SCRs as of the date of its issuance *(i.e.,* SCRs that enrolled in the NYISO's markets beginning on February 3, 2017, and thereafter) and directed that the NYISO file compliance tariff revisions.[7] The February 3 Order

[5] *Complaint Request Fast-Track Processing of the N.Y. Pub. Serv. Comm'n, et al*., Docket No. EL16-92-000 (June 24, 2016) (the "Complaint").

[6] Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff. As provided in Section 23.4.1 and as applicable to the quoted Services Tariff language herein, "[t]erms with initial capitalization not defined in Section 23.4 shall have the meaning set forth in the Open Access Transmission Tariff."

[7] On February 17, the NYISO submitted the required compliance tariff revisions in Docket. No. ER17-996-000 (the "2017 SCR Compliance Filing").

denied the complaint as to the application of the BSM rules to SCRs previously determined to be subject to Offer Floor Mitigation.

With respect to SCRs previously subject to mitigation, Paragraph 35 of the February 3 Order stated that:

> The Commission's long-standing practice has been that any exemption granted from NYISO's buyer-side market power mitigation rules only will be applied prospectively to new entrants. For example, in the Commission's order directing NYISO to implement a competitive entry exemption from its buyer-side market power mitigation rules, the Commission confirmed that new entrants that had received final offer floor determinations were bound by those determinations and, thus, could not apply for the competitive entry exemption.[70] While the Commission has allowed for mitigation redeterminations before a resource enters the market, the Commission has not allowed for such redeterminations after the resource enters the market.[71] The same rationale applies here. Accordingly, we deny the Complainants' request to rerun the mitigation tests for SCRs currently subject to mitigation.[8]

III. REQUEST FOR CLARIFICATION

The NYISO respectfully requests clarification of the following statement in Paragraph 35: "While the Commission has allowed for mitigation redeterminations before a resource enters the market, the Commission has not allowed for such redeterminations after the resource enters the market." The quoted language should not be construed to contradict or alter the meaning of existing tariff provisions that establish when redeterminations are, and are not, permitted under the BSM Rules.

Specifically, Section 23.4.5.7.2 of the Services Tariff provides that:

> Any determination received pursuant to this Section 23.4.5.7.2, Section 23.4.5.7.6. or 23.4.5.7.7 shall not become final for the relevant Examined Facility unless the Examined Facility accepts its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round, and posted any associated security pursuant to OATT Section 25, and remains a member of the

[8] February 3 Order at P 35, at n. 70 citing *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,110 (2015) at P 77, and at n. 71 citing, *e.g., Astoria Generating Co., L.P. v. N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,044, at P 51 (2015) ("April 2015 Order").

> completed Class Year.[9] The Unit Net CONE or exemption determination pursuant to this Section shall be final on the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed.

Section 23.4.5.7.3.3 of the Services Tariff defines when the NYISO will make "initial" and "final" determinations under the BSM rules. It reads in relevant part:

> The ISO shall determine the reasonably anticipated Unit Net CONE less the costs to be determined in the Project Cost Allocation or Revised Project Cost Allocation, as applicable, prior to the commencement of the Initial Decision Period Class Year, and shall provide to the Examined Facility the ISO's initial determination of an exemption or the Offer Floor . . . . The ISO shall provide to each project its revised price forecast and a revised initial determination for a Subsequent Decision Period no later than the ISO's issuance of a Revised Project Cost Allocation. If a project remains a member of a completed Class Year, the ISO shall inform the project of the final determination of the Offer Floor or whether the Offer Floor exemption specified above in this Section is applicable as soon as practicable after the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed. . . .

And Section 23.4.5.7.3.5 states further with respect to redeterminations that:

> Except as specified in Section 23.4.5.7.6 with respect to Additional CRIS MW, an Examined Facility for which an exemption or Offer Floor determination has been rendered may only be reevaluated for an exemption or Offer Floor determination if it meets the criteria in Section 23.4.5.7.3 (I) and either (a) enters a new Class Year for CRIS or (b) intends to receive transferred CRIS rights at the same location. An Examined Facility under the criteria in 23.4.5.7.3 (II) that did receive CRIS rights will be bound by the determination rendered and will not be reevaluated. An Examined Facility under the criteria that had been set forth in 23.4.5.7.3 (III) prior to May 19, 2016, will not be reevaluated.

Thus, the Services Tariff establishes that exemption and Offer Floor determinations become final "as soon as practicable after the date the ISO issues a notice to stakeholders that the Class Year decisional process has been completed." Final determinations may only be redetermined under the limited circumstances specified in Section 23.4.5.7.3.5, which would be

[9] Section 23.4.5.7.2 of the Services Tariff establishes that an Examined Facility "remains a member of a completed Class Year", with reference to the Open Access Transmission Tariff provisions, as an Examined Facility that has (i) has accepted its SDU Project Cost Allocation and deliverable MW, if any, from the Final Decision Round and (ii) along with all other remaining members, has posted any associated security pursuant to OATT Section 25 (OATT Attachment S) (for purposes of Section 23.4, a project that "remains a member of a completed Class Year")".

if an Examined Facility remained in the Class Year at the time of its completion, later was withdrawn from the interconnection queue, and reentered the queue to request CRIS or a transfer of CRIS at the same location. A redetermination could also occur in response to an express case-specific Commission directive, *e.g.*, to correct a determination based on erroneous inputs.[10] The NYISO does not believe that the quoted sentence in Paragraph 35 of the February Order is intended to permit redeterminations in other instances, *e.g.*, after an entity receives a final determination because it was in a completed Class Year but before it has "entered the market." Nevertheless, the NYISO respectfully asks that the Commission confirm that Paragraph 35 is not meant to contravene the BSM Rules, in particular the Sections cited herein, in order to avoid any possible future misunderstandings or disputes.

The Commission has previously granted clarification that similar statements concerning redeterminations should not be interpreted contrary to the provisions of the Services Tariff. In June 2012, the Commission issued an order in Docket No. EL11-42-000, which stated in a footnote that the BSM Rules "permit a re-assessment of the mitigation exemption determination for a non-exempt unit any time prior to the unit's entry into the ICAP market."[11] The NYISO sought clarification that this statement was not meant to expand the scope of permissible redeterminations beyond what is explicitly provided for in Section 23.4.5.7.3.5. In the April

[10] *See Hudson Transmission Partners, LLC v. New York Independent Sys. Operator, Inc.*, 145 FERC ¶ 61,156 (2013) at P 112 (directing the NYISO "to redo the exemption determination using [the Examined Facility's] actual cost of capital"). *See* Section 23.4.5.7.5 of the Services Tariff. The Services Tariff provision by with the BSM Rules were applied to SCRs and applicable ISO Procedures (subject to the February 3 Order) did not provide for redeterminations.

[11] *Astoria Generating Company L.P., et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,244 at n. 115 (2012) ("June 2012 Order").

2015 Order, the Commission confirmed that the NYISO's understanding was correct.[12] The Commission explained that:

> NYISO is correct that the Commission's statements in the June 22, 2012 Order were not intended to expand the categories of examined facilities eligible for retesting or to allow for retesting in situations where it would not be allowed under section 23.4.5.7.3.5 of NYISO's Services Tariff. The footnote was only intended to note that there are certain specified situations in which this section of the Services Tariff would allow retesting prior to the unit's entry into the NYISO ICAP market; not that a redetermination is permitted in all situations. The Services Tariff provides for retesting only in the case of a facility that either "(a) enters a new class year for CRIS or (b) intends to receive transferred CRIS rights at the same location." We find that the Services Tariff is clear that projects will not be retested under any other circumstances. Retesting may only occur as permitted by section 23.4.5.7.3.5 of NYISO's Services Tariff. [Footnote omitted]

In the April 2015 Order, the Commission clarified a similar statement. Paragraph 132 of the June 2012 Order had indicated that "to the extent NYISO provided initial mitigation exemption determinations prior to [the Class Year 2009 and 2010] processes, we will require NYISO to revise its determinations with respect to our findings herein." The NYISO sought clarification that this language should not be interpreted to require it to conduct redeterminations that were not be allowed by Section 23.4.5.7.3.5. The Commission confirmed that it "intended to require NYISO to reevaluate only final mitigation exemption determinations made under the buyer-side mitigation rules and only for those facilities that accepted CRIS" which were to be pursuant to the directives in its June 2012 Order.[13] The Commission should follow its precedent and grant clarification here. As in Docket No. EL11-42-000, the February 3 Order's general statement that redeterminations are allowed before a resource enters the market should be understood as noting that there are certain specified situations in which the Services Tariff would allow retesting prior to the unit's entry into the market; not that, more generally, a

[12] April 2015 Order at P 53.

[13] *Id*. at P 57.

redetermination is permitted at any time prior to entry. Such an interpretation would not conflict with any other Commission statement or ruling.

Nothing in the February 3 Order is inconsistent with the NYISO's interpretation of Paragraph 35. In particular, Paragraph 51 of the April 2015 Order, which is cited in Paragraph 35, addressed the distinction between the timing of determinations under the prior and current versions of the BSM Rules. Its general statement that redeterminations under the current rules would be made before resources enter the market is compatible with the express provisions of the Services Tariff. Similarly, redeterminations between the NYISO's issuance of a final determination and market entry were not in dispute in this proceeding, nor were any of the BSM Rule provisions that are applicable to Generators and UDR projects. No party in this proceeding has suggested, let alone supported a claim, that such rules should be revised. Neither the complainants nor any other party asked the Commission to allow additional redeterminations to occur between the time that a resource's final determination was issued and its entry into the market. The only tariff provision at issue was Section 23.4.5.7.5, which only applies to SCRs. Further, the Complaint's requested alternative relief of retesting was based upon and associated with its request to revise Section 23.4.5.7.5. [14]

Consequently, the Commission should grant clarification that the quoted sentence from Paragraph 35 of the February 3 Order was not intended to expand the scope of permissible redeterminations under the BSM Rules beyond what is expressly provided for in the Services Tariff.

[14] *See, e.g.*, Complaint at pp. 36-37 (requesting in pertinent part that "[f]or resources that currently are mitigated and participate in both the SCR and [certain specified programs], the NYISO should re-run the mitigation test, excluding benefits associated with the [] programs, to determine whether the resource should continue to be mitigated").

IV. SERVICE

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will email an electronic link to this filing to the official representative of each party in Docket No. ER16-92-000, to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant clarification of the single sentence in the February 3 Order that is described above.

Respectfully submitted,

/s/ *Gloria Kavanah*
Gloria Kavanah
Counsel for the
New York Independent System Operator, Inc.
Tel: (518) 356-6103
gkavanah@nyiso.com

Date: March 6, 2017

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

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 6th day of March 2017.

By: */s/ John C. Cutting*

John C. Cutting
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-7521