

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

**New York State Public Service Commission
New York State Energy Research and
Development Authority**

Docket No. EL19-86-000

v.

New York Independent System Operator, Inc.

**ANSWER OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure, and the Commission’s July 30 *Notice of Complaint*, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this answer to the complaint in the above-captioned docket (the “Complaint”). The Complaint was filed by the New York State Public Service Commission (“NYPSC”) and New York State Energy Research and Development Authority (together the “Complainants”). They argue that the Commission should establish a blanket exemption¹ for new energy storage resources from the NYISO’s currently effective buyer-side capacity market power mitigation measures (the “BSM Rules”).² In the alternative, they ask that the Commission “approve a megawatt cap exemption that would enable up to 300 MW of Energy Storage Resources to enter the market each year without the threat of mitigation.”³

¹ *Complaint on Behalf of the New York State Public Service Commission and the New York State Energy Research and Development Authority and Request for Fast Track Processing* (July 29, 2019) at 4.

² The BSM Rules are set forth in Section 23.4 of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

³ Complaint at 4.

The NYISO recognizes that Order No. 841 required the removal of barriers to participation by energy storage resources in ISO/RTO-administered markets.⁴ The NYISO has proposed a new participation model for energy storage resources which will facilitate their participation in the NYISO-administered markets recognizing their physical and operational characteristics.⁵ New York State policy also strongly favors the increased deployment of energy storage resources.⁶ The NYISO is open to working with Complainants to help New York State achieve its policy goals, including with respect to issues identified in the NYPSC’s new proceeding on resource adequacy matters.⁷

Nevertheless, the NYISO must also follow Commission precedent. The Commission has held that exemptions to the BSM Rules, such as those proposed by Complainants, are only justified if the resources that would be eligible for the exemption lack both the incentive and ability to suppress capacity market prices.⁸ As discussed below in Section II, Complainants have not shown that their proposed blanket exemption for energy storage resources, or their proposed alternative megawatt cap, satisfies this requirement. Although it is possible that such a showing might be made in the future, the Commission should deny the relief requested by the Complaint at this time.

⁴ *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 at P 12 (2018).

⁵ See New York State Independent System Operator, Inc., *Compliance Filing and Request for Extension of Time of Effective Date*, Docket No. ER19-467-000 (December 8, 2018).

⁶ See, e.g., Complaint at 2, 14-22; *Affidavit of Adam B. Evans in Support of the Complaint of the New York State Public Service Commission and New York State Energy Research Development Authority* (“Evans Affidavit”) at PP 5-8.

⁷ See NYPSC Case 19-E-0530, *Proceeding on Motion of the Commission to Consider Resource Adequacy Matters: Order Instituting Proceeding and Soliciting Comments* (August 8, 2019).

⁸ See, e.g., *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 at P 10 (2015) (“October 2015 Order”); 154 FERC ¶ 61,088 at P 31 (2016).

The NYISO has recognized the need to consider potential future enhancements to the BSM Rules to address an evolving resource mix driven largely by New York State policy goals, including those respecting energy storage. In fact, the NYISO has already proposed to conduct a comprehensive review of its BSM Rules, and to consider potential tariff enhancements, through its stakeholder process. The Commission should allow the NYISO to continue working to determine whether such enhancements should be pursued and, if so, what form they should take.

I. BACKGROUND

Commission precedent requires the NYISO to implement the BSM Rules because “under-mitigation” of uneconomic entry can artificially suppress capacity prices which, ultimately, harms long-term consumer interests.⁹ It also requires the NYISO to strive to avoid the potential harms of “over-mitigation,” which unnecessarily discourages entry by new resources.¹⁰ To help achieve this balance, the Commission has authorized the NYISO to establish multiple exemptions from the BSM Rules. Such exemptions must be carefully-tailored so that they only apply to resources that are shown to have “limited or no incentive and ability to artificially suppress ICAP Market Prices.”¹¹

⁹ See, e.g., *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 (2008) at P 103 (“While a strategy of investing in uneconomic entry and offering it into the capacity market at a low or zero price may seem to be good for customers in the short-run, it can inhibit new entry, and thereby raise price and harm reliability, in the long-run. Under the FPA, the Commission must ensure that rates are just and reasonable. The courts have long held that establishing just and reasonable rates involves a balancing of consumer and investor interests.”)

¹⁰ See, e.g., *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 154 FERC ¶ 61,088 at P 31 (reiterating the importance of balancing “the need to mitigate the exercise of buyer-side market power to ensure just and reasonable ICAP market prices with the risk of over-mitigating new entrants.”); *Consolidated Edison Co. of New York, Inc. v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,139 at P 4 (2015); *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,217 at P 77 (2013) (noting that buyer-side market power mitigation rules must “appropriately balance the need for mitigation of buyer-side market power against the risk of over-mitigation.”)

¹¹ *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 158 FERC ¶ 61,137 at P 31 (2017) (granting complaint requiring the NYISO to establish a

The Commission has previously accepted proposed exemptions from the BSM Rules when it found that its “limited or no incentive and ability” test was met.¹² The NYISO has supported such exemptions when the need for them was demonstrated, both in its stakeholder process and before the Commission.¹³ The NYISO has also taken action when warranted to avoid over-mitigation.¹⁴ By the same token, the Commission has rejected other proposed exemptions, including several put forward by the Complainants, that did not meet its standards.¹⁵

As the Complaint notes, questions concerning the application of the BSM Rules to energy storage resources are already before the Commission in the NYISO’s Order No. 841 compliance proceeding (the “Storage Compliance Proceeding”). The record in that docket is relevant to the issues presented by the Complaint. The NYISO’s independent Market Monitoring Unit (“MMU”) argued there that it was appropriate to subject energy storage resources to mitigation. The MMU explained that “the need for BSM measures is driven not by the size of individual generating projects, or portfolios, but by the aggregate amount of generating capacity that

prospective exemption for “Special Case Resources.”); *see also New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 154 FERC ¶ 61,088 at P 31 (2014) (“We maintain that certain narrowly defined renewable and self-supply resources should not be subject to the buyer-side market power mitigation rules because they have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.”)

¹² *Id.*

¹³ *See, e.g., Answer of New York Independent System Operator, Inc.*, Docket No. EL15-64-000 (June 29, 2015) (supporting multiple proposed exemptions); *Answer of New York Independent System Operator, Inc. in Support of Complaint*, Docket No. EL15-26-000 (January 15, 2015) (supporting introduction of competitive entry exemption and noting earlier NYISO efforts to establish one.)

¹⁴ *See, e.g., New York Independent System Operator, Inc., Motion Requesting Commission Action on Compliance Filing, Notice of Implementation Plans, and Conditional Request for Tariff Waivers of the New York Independent System Operator, Inc.*, Docket No. ER16-1404-000 (July 19, 2019) (“Renewable Exemption Motion”) (urging Commission to act on pending renewable exemption proposal.)

¹⁵ *See* October 2015 Order (denying request by New York State entities to establish exemptions under the BSM Rules for “reliability resources,” all resources smaller than 20 MW, controllable transmission lines, and repowering.)

receives out-of-market subsidies.”¹⁶ Similarly, the NYISO noted that the Commission’s October 2015 Order directing the creation of an exemption for certain renewable resources could be informative in the context of energy storage mitigation.¹⁷ The October 2015 Order emphasized that although many renewable resources would lack the incentive or ability to suppress capacity prices, this would not necessarily be true of all renewables. The Commission also expressed concern that the “cumulative impact of smaller resources could have material price effects.”¹⁸ Consequently, the Commission directed the NYISO to develop an annual cap limiting the scope of an exemption to “further limit” the risk that the entry of many small resources might, in aggregate, suppress capacity prices.

II. ARGUMENT

A. The Complaint Has Not Demonstrated that the Currently Effective BSM Rules Are Unjust, Unreasonable, or Unduly Discriminatory Without a Blanket Exemption for Energy Storage Resources

The Complaint has not made the showing required by Commission precedent; *i.e.*, that entry by energy storage resources does not have the ability to suppress capacity prices.

Therefore, it has not been demonstrated that the BSM Rules are unjust, unreasonable, or unduly discriminatory in the absence of a blanket exemption for energy storage resources.¹⁹

¹⁶ See *Request to Intervene Out-of-Time, Request for Leave to Answer, and Limited Answer of the NYISO Market Monitoring Unit*, Docket ER19-467-000 at (February 25, 2019).

¹⁷ *Id.*

¹⁸ See *New York Independent System Operator, Inc., Response to April 1, 2019 Letter and Notification of Implementation Issues that Necessitate Additional Limited Compliance Tariff Revisions*, Docket No. ER19-467-000 at 23 (May 1, 2019) (the “May 1 Filing”).

¹⁹ See, e.g., *City of Oakland, California v. Pacific Gas and Electric Company*, 165 FERC ¶ 61,249 (2018) at P 24.

The Complaint notes that approximately 300 MW of energy storage are expected to be included in Class Year 2019²⁰ and that 3,000 MW are anticipated to enter over the next ten years.²¹ Complainants have not demonstrated that the entry of storage resources on that scale and in the area where they would prefer it to occur, *i.e.*, the New York City Mitigated Capacity Zone, would not result in the suppression of capacity prices. Complainants do not address the point raised by the MMU in the Storage Compliance Proceeding—and by the Commission in the October 2015 Order—that the aggregate impact of the entry of numerous small resources must be considered even when the entry of any individual resource is unlikely to cause price suppression. While the Complaint argues that the entry of large numbers of storage resources may have “incidental” or “short-term” price effects,²² that is not consistent with what the Commission has previously required to support an exemption.

Moreover, Complainants have not presented evidence that the currently effective BSM Rules have flaws that would make it unreasonable to apply them to energy storage resources. As described in the Storage Compliance Proceeding, the NYISO is pursuing tariff amendments that seek to address potential timing concerns with the current process of applying BSM Rules to certain small resources (including energy storage resources). The proposal under development would create a new, expedited path for review. The NYISO currently anticipates filing the tariff modification by the end of 2019.²³

²⁰ Complaint at 37.

²¹ See Complaint at 36-37.

²² See, *e.g.*, Complaint at 27-28, Evans Affidavit at P 22.

²³ See May 1 Filing at 24. The NYISO is currently revising its Class Year process to allow certain resources, including energy storage resources, to go through a deliverability study process and be evaluated under the current BSM rules, in a process that would take place outside of the Class Year and may be completed in a 3-6 month time period. See *Class Year/Interconnection Queue Redesign* presented at August 6, 2019 Joint ESPWG/TPAS/ICAP Working Group Meeting. <
<https://www.nyiso.com/documents/20142/7834030/03%20Class%20Year%20Redesign.pdf/45928d8b->

The Complaint makes several broad policy-based arguments. However,²⁴ the Commission has not required evidence of intent to suppress prices before the BSM Rules may be applied.²⁵ The Commission has previously rejected claims²⁶ that to the extent that mitigation rules may discourage uneconomic entry by certain state-preferred resources, they are inherently a “barrier to entry” that impermissibly interferes with legitimate state authority. Instead, the Commission has held that mitigation rules are not barriers to entry so long as they are structured to avoid over-mitigation.²⁷ The Complaint implies that the Order No. 841 mandate that ISOs/RTOs eliminate barriers to energy storage participation in their markets means that applying the BSM Rules to storage violates Order No. 841.²⁸ But Order No. 841 did not say that storage resources should be exempt from mitigation and, as noted above, the BSM Rules are not an impermissible “barrier to entry.” Furthermore, the fact that the BSM Rules do not include

76a0-4551-78a6-309feb9c8109>. This presentation notes that the NYISO plans to make a tariff filing on these issues by December 2019.

²⁴ See, e.g., Complaint at 4 (“there is no evidence to suggest that the State is seeking to ‘suppress’ ICAP capacity prices . . . Therefore, there is no rational basis apply BSM measures to Energy Storage Resources in a manner that improperly interferes with legitimate state actions”); Evans Affidavit at P 11 (“Buyer-side mitigation rules are intended to prevent buyers with market power from intentionally suppressing prices below competitive levels.”)

²⁵ See *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (“PJM MOPR Order”), *reh’g pending* at P 155 (“The Commission has previously recognized that resources receiving out-of-market support are capable of suppressing market prices, regardless of intent. We reiterate that finding here.”) (Footnote omitted). See also *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 at P 69 (2012) (“it is not reasonable for buyer-side mitigation to depend on the intent of the seller because an artificially low offer price can unreasonably suppress market prices regardless of the seller’s intent.”); *ISO New England, Inc., et. al.*, 135 FERC 61,029 at P 170 (2011) (finding that uneconomic entry, regardless of resource and regardless of intent, “can produce unjust and unreasonable prices by artificially depressing capacity prices”).

²⁶ See, e.g., Complaint at 4, Evans Affidavit at P 19.

²⁷ See PJM MOPR Order at P 158 (“States may continue to support their preferred types of resources in pursuit of state policy goals. At the same time, we have exclusive jurisdiction over the wholesale rates of both subsidized and unsubsidized resources, and a statutory obligation to ensure they are just and reasonable.”)

²⁸ See, e.g., Complaint at 12-14.

“net buyer” restrictions or a minimum price impact threshold does not mean that they are “unduly discriminatory.”²⁹ The “net buyer” requirement was eliminated in 2008.³⁰ Similarly, the minimum price impact threshold is a specific feature of the physical withholding measure under the NYISO’s supplier-side mitigation rules. It was established in 2008 for reasons that are inapplicable to the BSM Rules.³¹

B. The Complaint Has Not Demonstrated that its Alternative Exemption Proposal Satisfies Commission Precedent

Complainants suggest that if the Commission does not agree to establish their proposed blanket exemption, it should, in the alternative, create a “limited” exemption of 300 MW per calendar year. They suggest that “[a]n annual cap of 300 MW, with unused amounts carried over to the following years, would provide New York with a clear path to achieve its 3,000 MW storage deployment goal over the 10-year period from 2020-2030.”³²

It is possible that a storage exemption with an appropriate MW cap might be justified under Commission precedent. However, the Commission’s standard has not yet been met. As was the case with Complainants’ proposed blanket exemption, it has not been demonstrated that the entry of up to 300 MW of energy storage per calendar year for ten years would not suppress capacity prices. It has not been shown, as the October 2015 Order required with respect to renewables, that Complainants’ proposed cap would “further limit” the risk of capacity price

²⁹ See Complaint at 26.

³⁰ See *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,301 at P 29 (2008) (granting rehearing to remove “net buyer” requirement.)

³¹ See *New York Independent System Operator, Inc.*, 150 FERC ¶ 61,208 at PP 50-55 (2015) (describing history of physical withholding provision). See also *New York Independent System Operator, Inc., Tariff Compliance Filing and Request for Waiver of the New York Independent System Operator, Inc.*, Docket No. EL07-39-005, *et. al.* (May 6, 2008) at 11-13, 14 (describing rationale for price impact threshold under the physical withholding measure.)

³² Complaint at 37.

impacts from large-scale entry by small resources.³³ The fact that a 300 MW annual cap would be sufficient to support the level of energy storage entry that the Complainants anticipate does not mean that it is consistent with Commission precedent.

C. The Commission Should Allow the NYISO to Work Through Its Shared Governance Process to Explore Potential Enhancements to the BSM Rules

The fact that the Complaint has not met the burden of proof necessary to justify tariff changes under FPA Section 206 does not mean that there is no reason to consider improvements to the BSM Rules. The NYISO has identified a project for 2020 that would involve a comprehensive review of its BSM Rules.³⁴ The NYISO recognizes that the BSM Rules were established to evaluate traditional generation technologies funded primarily by private capital. The resource mix is evolving with new technologies—including storage, renewables, and distributed energy resources—seeking to enter the wholesale markets. These resources are more likely than traditional resources to be partially funded through governmental initiatives furthering New York State policy. The review project, which was scored as the fourth highest out of more than twenty potential projects by stakeholders in the project prioritization process, will examine the current buyer-side mitigation framework and principles to determine whether the rules efficiently address price suppression concerns involving both traditional and new resource types in light of both private and public funding considerations. Through its comprehensive review, the NYISO will consider potential BSM revisions that would

³³ October 2015 Order at PP 47, 51.

³⁴ See *2020 Market Project Candidates: Product and Project Management* (June 12, 2019) at 11-14 (describing the proposed “Comprehensive Mitigation Review.”) <
<https://www.nyiso.com/documents/20142/7617587/02%202020%20Project%20Candidates%20-%20MP%20Markets%20Descriptions.pdf/80538b46-0930-a6fd-e624-8da343162958>>.

appropriately accommodate New York State policy goals, while maintaining adequate price signals for resources that are required for reliability.

The Commission should not preempt the NYISO's shared governance system on this issue. Instead, at least in the first instance, it should let the stakeholder process determine whether BSM Rule enhancements should be pursued and, if so, exactly what form they should take.

III. RESPONSE TO REQUEST FOR FAST-TRACK PROCESSING

The Complaint requests "Fast-Track" processing. The NYISO does not oppose expedited Commission action on the Complaint provided that the Commission does not shorten the standard periods for responses to any further filings.³⁵ The Complaint asserts that action is needed in time for any changes to be implemented before the NYISO makes mitigation determinations for Class Year 2019 projects. The NYISO recently stated that it currently estimates that it will be required by the tariff to make these determinations as early as May 2020, although this timing is subject to change.³⁶

IV. COMPLIANCE WITH COMMISSION RULE 213(c)(2)(i)

Attachment I to this Answer addresses the formal requirements of Commission Rule 213(c)(2) in order to ensure the NYISO's full compliance with them.

V. CORRESPONDENCE AND COMMUNICATIONS

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³⁵ Complaint at. 5, 37-38.

³⁶ See Renewable Exemption Motion at 2, n.7. It is highly unlikely that mitigation determinations will be made in "Fall 2019" as the Complaint suggests at 37.

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VI. CONCLUSION

For the reasons set forth above, the Commission should find that the Complaint has not made the showing required to establish an exemption for energy storage resources at this time. The Commission should allow the NYISO, the Complainants, and other stakeholders to collaboratively consider potential improvements to the BSM Rules.

Respectfully Submitted,

/s/ David Allen

David Allen
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Dated: August 19, 2019

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