

**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 Nos. EL16-92-002 and
ER17-996-001
(not consolidated)**

v.

New York Independent System Operator, Inc.

New York Independent System Operator, Inc.

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rule 213 of the Federal Energy Regulatory Commission’s (the “Commission’s”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”),² respectfully submits this request for leave to answer and answer (“Answer”). This Answer responds to the *Protest of Independent Power Producers of New York, Inc. and Request for Expedited Commission Action* (the “IPPNY Protest”). The IPPNY Protest addresses the NYISO’s March 11, *Notice of Compliance Plan and Request for Conditional Waiver* (“NYISO Notice”) in this docket.³ That filing explained how the NYISO intended to

¹ 18 C.F.R. §385.213 (2019).

² Capitalized terms not defined in this Answer shall have the meaning set forth in the NYISO Open Access Transmission Tariff (“OATT”) and its Market Administration and Control Area Services Tariff (“Services Tariff”).

³ The independent Market Monitoring Unit for the NYISO also filed a protest but it raised no substantive arguments. That protest is therefore not addressed in this filing.

apply its buyer-side capacity market power mitigation measures (the “BSM Rules”)⁴ to new Special Case Resources (“SCRs”)⁵ in light of the February 2020 Order⁶ while awaiting the outcome of the Commission-initiated paper hearing in these proceedings.

As discussed below, the IPPNY Protest is wrong to claim that the NYISO has misinterpreted the Commission’s prior holdings on the treatment of payments to SCRs under state programs. The tariff language identified in the NYISO Notice is the language that the NYISO understands is currently-effective and applicable to SCRs given the history of filed tariff modifications and orders impacting the relevant tariff language. The February 2020 Order did not require the NYISO to submit a compliance filing changing the currently-effective tariff.

However, the NYISO agrees with IPPNY that if the Commission intends for the NYISO to apply a tariff rule other than the one identified in the NYISO Notice pending the outcome of the paper hearing, the Commission should require the NYISO to modify the currently-effective tariff language. If the Commission believes that such a tariff change is necessary it should say so as soon as practicable so that there is certainty regarding the mitigation rules applicable to SCRs. Any such modified rule should apply prospectively after the Commission accepts a compliance filing modifying the tariff language, and in a manner that accommodates the relevant ICAP auction schedule. As described further below, any such rule change would also need to be

⁴ The BSM Rules are set forth in Attachment H (Section 23) of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”). The BSM Rules that apply to SCRs differ in various ways from the rules that apply to Generators and other “Examined Facilities.” The SCR provisions of the BSM Rules are set forth in Section 23.4.7.5 of the Services Tariff.

⁵ Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

⁶ *New York State Public Service Commission, et. al. v. New York Independent System Operator, Inc.*, 170 FERC ¶ 61,120 (2020).

implemented in a manner that is consistent with the timing of the monthly process for reviewing the participation of new SCRs.⁷

I. REQUEST FOR LEAVE TO ANSWER

The Commission may at its discretion accept, and routinely accepts, answers to protests where they help to clarify complex issues, provide additional information, are helpful in the development of the record in a proceeding, or otherwise assist in the decision-making process.⁸ The NYISO should be permitted to answer the IPPNY Protest because it raises complex questions concerning the interpretation of multiple Commission rulings on the application of the BSM Rules to SCRs. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

II. ANSWER

The IPPNY Protest devotes seven pages to recounting the history of the Commission's evolving rulings, dating back to 2008, on SCR mitigation in the NYISO-administered Installed Capacity market. Even so, IPPNY's description of that history is incomplete. IPPNY overlooks key facts which must be considered and which support the compliance plan described in the NYISO Notice.

⁷ In particular, SCR enrollment for the May 2020 capability month closed on April 8. Offer Floor determinations for those SCRs are to be made on April 17, which will almost certainly be before the Commission can act on the IPPNY Protest.

⁸ See, e.g., *Southern California 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"); *New York Independent System 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); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160, at P 13 (2012); and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217, at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

The tariff language at issue is found in Section 23.4.5.7.5 of the Services Tariff. It states that “payments or the value of other benefits provided under programs administered or approved by New York State or a government or instrumentality” would not be included in SCR Offer Floor calculations (the “State Program Language”).⁹ The State Program Language was originally submitted by the NYISO in its August 2010 Compliance Filing to apply solely to the New York City Locality, which was the NYISO’s only Mitigated Capacity Zone at the time.¹⁰ In a June 2012 Filing,¹¹ the NYISO proposed to apply the State Program Language to all Mitigated Capacity Zones, including any newly established Mitigated Capacity Zones. The Commission accepted the June 2012 Filing in a June 2013 Order.¹²

In March 2015, however, the Commission issued an order rejecting the State Program Language with respect to the New York City Locality.¹³ But the March 2015 Order did not address the June 2013 Order’s ruling accepting the State Program Language for Mitigated Capacity Zones other than New York City. The NYISO timely sought clarification regarding the scope of the March 2015 Order’s ruling.¹⁴ The NYISO also submitted a 2015 compliance filing

⁹ The IPPNY Protest refers to this provision as the “Exclusion Language.”

¹⁰ New York Independent System Operator, Inc., *Compliance Filing*, Docket No. ER10-2371-000 (Aug. 12, 2010, re-submitted Aug. 24, 2010) (“August 2010 Compliance Filing”).

¹¹ This filing was made on June 29, 2012 in a separate docket with the objective of implementing both buyer-side and supplier-side mitigation measures for new capacity zones using the existing market mitigation measures currently applicable to the New York City Locality. *See* New York Independent System Operator, Inc., *Further Compliance Filing*, Docket No. ER12-360-001 (June 29, 2012).

¹² *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (the “June 2013 Order.”) The NYISO applied the State Program Language to both the New York City Locality and the G-J Locality, which was established in 2013, starting in May 2014. The NYISO stopped applying the language to the G-J Locality in February 2017, when the Commission created a blanket exemption for new SCRs. It stopped applying the State Program Language to New York City in 2015 after the issuance of the March 2015 Order.

¹³ *New York Independent System Operator, Inc.*, 150 FERC ¶ 61,208 (2015).

¹⁴ *See Request for Expedited Clarification of the New York Independent System Operator, Inc.*, Docket No. ER10-2371-000 (March 30, 2015) (“2015 Clarification Request”).

that proposed to replace the State Program Language for Offer Floor calculations involving New York City SCRs but to retain it for all other Mitigated Capacity Zones.¹⁵

Meanwhile, other parties opposed the 2015 Clarification Request, arguing that there was no basis for the March 2015 Order's holding to apply outside of New York City.¹⁶ Parties also sought rehearing of the Commission's rejection of the State Program Language in New York City.¹⁷

The February 2017 Order reversed course and exempted all new SCRs from the BSM Rules.¹⁸ That ruling, however, did not address the question of whether the March 2015 Order's rejection of the State Program Language was intended to apply outside of New York City. Instead, in an order issued concurrently, the Commission dismissed the 2015 Clarification Request and the 2015 Compliance Filing as moot without indicating what the Commission had intended regarding the State Program Language.¹⁹ It did not speak to the June 2013 Order. The Commission likewise dismissed as moot requests for rehearing of the March 2015 Order.²⁰

The February 2020 Order overturned the February 2017 Order exemption of new SCRs but gave no guidance regarding the Offer Floor calculation issues from 2015. Once again, the Commission did not address the 2015 Clarification Request, the 2015 Compliance Filing, or the

¹⁵ See New York Independent System Operator, Inc., *Compliance Filing*, Docket No. ER10-2371-002 (April 20, 2015) ("2015 Compliance Filing").

¹⁶ See *Answer in Opposition to NYISO's Expedited Clarification Request*, Docket Nos. EL07-39-006, *et. al.* (April 2, 2015).

¹⁷ See *Request for Rehearing of the Indicated New York Transmission Owners*, Docket Nos. EL07-39-006, *et. al.*, at 3-7 (April 20, 2015); *Request for Rehearing of the New York State Public Service Commission*, Docket Nos. EL07-39-006, *et. al.*, at 13-15 (April 20, 2015).

¹⁸ *New York State Public Service Commission, et. al. v. New York Independent System Operator, Inc.*, 158 FERC ¶ 61,137 (2017) ("February 2017 Order").

¹⁹ *New York Independent System Operator, Inc.*, 158 FERC ¶ 61,127 at PP 14, 15 (2017).

²⁰ *Id.* at P 14.

mooted requests for rehearing. Notably, the Commission also did not require any compliance filing to modify the version of Section 23.4.5.7.5 containing the State Program Language that had been filed in June 2012 and accepted in the June 2013 Order.

In short, the Commission has never overturned the June 2013 Order's acceptance of language accepting the State Program Language (at a minimum as applied to SCRs in Mitigated Capacity Zones other than New York City). Again, the Commission has never accepted a tariff revision, through a compliance filing or otherwise, that would modify the language accepted in the June 2013 Order. The NYISO does not view the February 2020 Order as somehow impliedly resurrecting the 2015 rejection of the State Program Language for New York City three years after pleadings addressing that ruling were dismissed as moot.²¹ In the absence of any order requiring the modification of the language accepted in the June 2013 Order, the NYISO identified this language as part of the currently-effective Section 23.4.5.7.5 in the NYISO Notice²² pending the outcome of the paper hearing.²³

Contrary to the IPPNY Protest, nothing in the February 2020 Order contradicts the NYISO's interpretation. In fact, the February 2020 Order observes that the record in this proceeding is both "stale and limited"²⁴ which suggests that it would be inappropriate to change the State Program Language without additional evidence. Similarly, the February 2020 Order stated that, "to the extent that NYISO has been including the monthly value of payments SCRs

²¹ It is unclear whether the Commission lawfully could revive the March 2015 Order's rejection of the State Program Language for New York City years after dismissing rehearing challenges to that ruling as moot.

²² In fact, the version of Section 23.4.5.7.5 that was included in the NYISO Notice was the version posted on the NYISO website immediately before the February 2020 Order was issued.

²³ See NYISO Notice at 5. The NYISO Notice anticipated that such guidance would be provided regarding individual programs at the conclusion of the paper hearing proceeding. But, as noted below, the Commission could also provide that guidance sooner in response to the IPPNY Protest.

²⁴ February 2020 Order at P 14.

receive from retail-level demand response programs designed to address distribution-level reliability needs in the calculation of SCRs' offer floors," in the time since the February 2017 Order, "we find NYISO's application of Section 23.4.5.7.5 of its Services Tariff to be unjust and unreasonable."²⁵ Absent additional Commission guidance it is not clear how the approach put forward in the NYISO Notice could now be unjust and unreasonable.

The NYISO emphasizes that its position is based on its good faith interpretation of a long and complex series of SCR mitigation rulings. The intent of the NYISO Notice was to provide transparency as to the currently-effective tariff language given the complicated history of Section 23.4.5.7.5. The NYISO believes that its interpretation of its current tariff is correct pending further Commission guidance.

However, if the Commission intends for the NYISO to apply a rule other than the one specified in the NYISO Notice before the results of the paper hearing are known, the Commission should issue an order requiring the NYISO to submit a compliance filing modifying the State Program Language.²⁶ If the Commission believes that tariff modifications are required, then the Commission should clarify whether the State Program Language should be omitted for SCR Offer Floor calculations in New York City or in both New York City and the G-J Locality.

To the extent that the Commission wishes the NYISO to change the approach described in the NYISO Notice, the Commission should also indicate that the changes should take effect prospectively only after the Commission accepts new tariff language that captures any newly clarified Commission directive. The NYISO would need to include in any such tariff

²⁵ February 2020 Order at P 17. The NYISO Notice explained that the NYISO had implemented the February 2017 Order without waiting for Commission acceptance of the NYISO's compliance filing thereunder.

²⁶ It appears to the NYISO that this is the approach that the February 2020 Order envisioned, *i.e.*, that the currently-effective tariff language would remain in place pending further guidance from the paper hearing process or another order.

modification a timeline for implementation that accommodates the monthly review of new SCRs completed prior to the relevant spot auction certification process. SCR enrollments are open every month and related offer floor analysis will be conducted every month. Exemption and Offer Floor determinations for the SCRs entering the market in the May 2020 capability month will begin to be made on April 17. Determinations for subsequent months will also be made on a monthly schedule and may be finalized before the Commission acts on the IPPNY Protest. If the Commission decides to change the State Program Language it should do so as soon as practicable to provide certainty to all Market Participants.

The Commission should be aware, however, that the IPPNY Protest overstates the potential near-term price impacts of applying the State Program Language, and thereby exaggerates the need for expedited action. IPPNY's estimates were based on a hypothetical scenario in which 100 MW of new SCR Unforced Capacity ("UCAP") entered in New York City. However, enrollments for SCRs seeking to enter the market in May 2020 closed on April 8, 2020. The NYISO's review of these enrollments indicates that fewer than 10 MW of new SCR capacity has attempted to enroll in the Mitigated Capacity Zones and will be subject to the BSM Rules in May. Thus, it does not appear that the near-term price impact of retaining the State Program Language will be as great as IPPNY suggests.

Given the complex history of the Commission's SCR mitigation rulings, and the facts recounted above, the NYISO does not believe that the compliance plan described in the NYISO Notice could reasonably be deemed to be in violation of the February 20 Order. It therefore does not believe that there would be any basis for requiring retroactive adjustments to any SCR-related mitigation determinations that are made before the Commission acts on the IPPNY

Protest.²⁷ Avoiding retroactive changes to market auction results, and to determinations under the BSM Rules after a resource has entered the market, is also consistent with Commission policy.²⁸

III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and reject IPPNY's Protest of the NYISO Notice. In the alternative, if the Commission believes that changes to the State Program Language are needed, it should act as soon as practicable to direct the NYISO to modify its approach prospectively.

Respectfully Submitted,

/s/ David Allen

David Allen

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April 15, 2020

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²⁷ To the extent that the Commission deemed it necessary, the NYISO would ask the Commission to exercise its remedial discretion to not require any retroactive changes given that the NYISO has acted based on a good faith interpretation of a complex record.

²⁸ See, e.g., *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 (2017), *order denying reh'g.*, 169 FERC ¶ 61,237 (2019) (rejecting arguments that certain PJM capacity auctions should be re-run based on FERC's general policy that, it "does not order a remedy that requires rerunning a market because market participants participate in the market with the expectation that the rules in place and the outcomes will not change after the results are set."); February 2017 Order at P 35 (reiterating Commission policy against revisiting determinations made under the BSM Rules when a resource has entered the market.)

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 15th day of April 2020.

/s/ Joy A. Zimmerlin

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