

May 29, 2020

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: New York Independent System Operator, Inc., Compliance Filing, Docket
Nos. ER20-____-000, EL16-92-00_, ER17-996-00_**

Dear Ms. Bose:

In accordance with Ordering Paragraph “B” of the Commission’s May 12, 2020 *Order on Clarification and Request for Conditional Waiver* (“May 12 Order”),¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this compliance filing. The May 12 Order addresses the NYISO’s *Notice of Compliance Plan and Request for Conditional Waiver*, which was filed on March 11, 2020 (“Notice of Compliance Plan”). In this filing, the NYISO amends Section 23.4.5.7.5 of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) to delete the “State Program Language” as prescribed by the May 12 Order. This filing also describes how the NYISO will calculate Offer Floors² for new Special Case Resources (“SCRs”) under the tariff as modified in this compliance filing. The NYISO will continue to conduct evaluations under its buyer-side capacity market power mitigation measures (the “BSM Rules”) for new SCRs that enroll each month in this manner pending the outcome of the paper hearing process in Docket No. EL16-92-001.

I. COMMUNICATIONS

Communications regarding this proceeding should be sent to:

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¹ *New York Public Service Commission v. New York Independent System Operator, Inc.*, 171 FERC ¶ 61,114 (2020).

² Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff.

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II. LIST OF DOCUMENTS SUBMITTED

The NYISO submits the following documents with this transmittal letter:

1. A blacklined version of the NYISO Services Tariff compliance revisions proposed in this filing (“Attachment I”); and
2. A clean version of the NYISO Services Tariff compliance revisions proposed in this filing (“Attachment II”).

III. BACKGROUND

The NYISO submitted the Notice of Compliance Plan in response to the Commission’s February 20, 2020 order³ (“February 20 Order”) addressing the applicability of the BSM Rules to new SCRs located in Mitigated Capacity Zones. In particular, the February 20 Order:

(1) directed NYISO to apply its buyer-side market power mitigation rules to SCRs; (2) found that the calculation of SCRs’ offer floors pursuant to the buyer-side market power mitigation rules should exclude payments SCRs receive from retail-level demand response programs designed to address distribution-level reliability needs; [and] (3) initiated a paper hearing to examine the retail-level demand response programs discussed in the underlying complaint;⁴

In response to the February 20 Order’s directive to apply the BSM Rules to new SCRs, the NYISO submitted the Notice of Compliance Plan “to explain exactly which tariff provisions are currently effective and applicable to new SCRs.”⁵ The Notice of Compliance Plan indicated that, pending the outcome of the paper hearing in these proceedings, the effective tariff included language providing that payments or other benefits received under New York State programs should be excluded from SCR Offer Floors. The NYISO and the Commission have referred to this provision as the “State Program Language” in Section 23.4.5.7.5 of the Services Tariff. It reads:

³ *New York Public Service Commission v. New York Independent System Operator, Inc.*, 170 FERC ¶ 61,120 (2020).

⁴ May 12 Order at P 7.

⁵ Notice of Compliance Plan at 4.

The Offer Floor calculation shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity except for payments or the value of other benefits provided under programs administered or approved by New York State or a government instrumentality of New York State.

The May 12 Order held that “the State Program Language should be omitted for SCRs entering all mitigated capacity zones” and directed the “NYISO to submit a compliance filing within 45 days of the date of this order, to be effective as of the date of this order.”⁶ In particular the May 12 Order noted that a Commission order from March 2015 had explicitly rejected the State Program Language and had further directed the NYISO that, “unless ruled exempt by Commission order on a request for exemption filed by the state, all rebates and other benefits from state programs must be included in the SCR Offer Floor.”⁷

IV. PROPOSED COMPLIANCE TARIFF REVISIONS

In compliance with the May 12 Order, the NYISO is proposing to delete the “State Program Language” in its entirety from Section 23.4.5.7.5. As required by the Commission, the NYISO is proposing to make this change effective on May 12, 2020.

The NYISO understands that by ordering the deletion of this language, the Commission is requiring the NYISO to include all payments or benefits received by the SCR or Responsible Interface Party “under programs administered or approved by New York State or a government instrumentality of New York State” in the calculation of the Offer Floor. The NYISO implemented the rule in this manner for new SCRs enrolled for the June 2020 Capability Month and will continue to do so pending the outcome of the paper hearing.

With the State Program Language, the NYISO would have excluded all revenues from the Offer Floor for SCRs. After the removal of the State Program Language, Section 23.4.5.7.5 continues to specify that Offer Floors must include “the monthly value of any payments or other benefits the Special Case Resource receives from a third party for providing Installed Capacity, or that is received by the Responsible Interface Party for the provision of Installed Capacity by the Special Case Resource.” The February 20 Order held that the Commission would “evaluate through a paper hearing the retail-level demand response programs listed in the complaint on a program-specific basis to determine whether they are designed to address distribution-level reliability needs and, therefore, whether payments from those programs should be excluded from the calculation of SCRs’ offer floors.”⁸ Accordingly, under the FERC orders, payments and benefits under retail-level state program must be included in SCR Offer Floors unless the Commission orders the NYISO to exclude these payments or benefits received under a

⁶ *Id.* at P 20.

⁷ May 12 Order at P 5, citing 150 FERC ¶ 61,208 at P 30.

⁸ February 20 Order at P 19.

program(s) that the Commission has determined addresses “distribution-level reliability needs” and thus should not be deemed to be received “for the provision of Installed Capacity.”

The NYISO notes that some stakeholders dispute the NYISO’s interpretation. They argue that the tariff and the Commission’s orders should be interpreted as requiring the NYISO to take the opposite approach, *i.e.*, to exclude some or all of the payments and benefits under retail-level state programs from SCR Offer Floors unless the Commission expressly concludes that they should be included after the paper hearing.

The NYISO has previously noted in this proceeding that it makes Offer Floor determinations for new SCRs under the BSM Rules every month. The NYISO expects to next make Offer Floor determinations in the second week of June for new SCRs entering the market for the July capability month. The final date the NYISO can issue Offer Floor determinations for July is June 17.

IV. SERVICE

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, to the official representative of 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. In addition, the complete filing will be posted on the NYISO’s website at www.nyiso.com.

V. CONCLUSION

The NYISO respectfully requests that the Commission accept the proposed compliance tariff revision included in this filing and make it effective, as directed, on May 12, 2020.

Respectfully Submitted,

/s/ David Allen

David Allen

Senior Attorney

New York Independent System Operator, Inc.

cc:	Anna Cochrane	Daniel Nowak
	Jignasa Gadani	Larry Parkinson
	Jette Gebhart	Douglas Roe
	Kurt Longo	Frank Swignoski
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	David Morenoff	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 29th day of May 2020.

/s/ *Mohsana Akter*

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