

**New York Independent System Operator, Inc.** )

between August 19, 2020 and September 30, 2020. Prior to implementing the ESR participation model, the NYISO requires Commission action on the Compliance Filing. Additionally, Commission action on the Rehearing Request prior to ESR implementation would avoid significant uncertainty regarding the transmission charges that NYISO will assess when ESRs withdraw Energy.

## **I. Background**

On December 3, 2018, the NYISO submitted modifications to its Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariff (“Services Tariff”) proposing a participation model for ESRs in compliance with Order No. 841 (the “December 2018 Filing”).<sup>4</sup> The NYISO amended the December 2018 Filing on May 31, 2019.<sup>5</sup> On December 20, 2019, the Commission accepted the majority of the December 2018 Filing as amended, but rejected certain provisions, and required substantive modification of other provisions (the “December 2019 Order”).<sup>6</sup>

On January 21, 2020, the NYISO requested rehearing of the December 2019 Order’s determination that the NYISO is required to assess transmission charges to ESRs participating in its markets when such resources are charging for later injection to the grid but are not being dispatched by the NYISO to provide a service in its markets.<sup>7</sup> The NYISO submitted the Compliance Filing on February 18, 2020 addressing all of the issues identified in the Commission’s December 2019 Order. The Commission has instructed the NYISO to implement

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<sup>4</sup> *New York Indep. Sys. Operator, Inc.* December 3, 2019 Compliance Filing and Request for Extension of Time of Effective Date, Docket No. ER19-467-000.

<sup>5</sup> *New York Indep. Sys. Operator, Inc.* May 31, 2019 Amendment to Compliance Filing, Docket No. ER19-467-002.

<sup>6</sup> *New York Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,225 (2019) (hereinafter “December 2019 Order”).

<sup>7</sup> *December 2019 Order* at PP 186-189.

its ESR participation model by September 30, 2020.<sup>8</sup> The NYISO is preparing to implement the participation model before that date, but needs the Commission to act on its Compliance Filing first so the NYISO will know which rules to implement, and whether any additional changes are necessary.

Three of the six changes the Commission directed in its December 2019 Order were so clear as to already be fixed by the December 2019 order,<sup>9</sup> and the NYISO is confident that the changes proposed in its Compliance Filing achieve the Commission's instructions.<sup>10</sup> However, there were three directives that required the NYISO to exercise judgement in developing its compliance proposals:

1. Stating that the NYISO's proposal exempted ESRs "from transmission charges that are applicable to other load," the December 2019 Order directed the NYISO to submit Tariff revisions that would apply transmission charges to an ESR when that resource is charging for later resale in the wholesale markets, but is not being dispatched by the NYISO to provide a service, and to explain how such charges would be calculated.<sup>11</sup> That directive is the subject of the NYISO's Rehearing Request.<sup>12</sup> The

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<sup>8</sup> *December 2019 Order* at P 223; amended by *New York Indep. Sys. Operator, Inc.*, Docket No. ER19-467-000 (Mar. 5, 2020) (Notice of Extension of Time).

<sup>9</sup> *Ameren Services Co., et al. v. Midwest Indep. Sys. Operator, Inc., et al.*, 155 FERC ¶ 61,073 (2016) ("*Ameren Order*"). The Order stated that when a Commission directive leaves "no uncertainty that could only be removed through acceptance of [a] compliance filing," the rate is "fixed" by the order itself. *Id.* at P 22. The three compliance directives, described in note 10 below, "simply [make] the revisions to the text that the Commission specified," and therefore Commission acceptance of those proposals in an Order on the Compliance Filing is ministerial. *Id.* at P 21.

<sup>10</sup> Specifically, the NYISO submitted ministerial compliance revisions to:

- (a) remove all of the revisions to the Installed Capacity Buyer-Side Market Power Mitigation Measures that NYISO proposed in its December 2018 compliance filing (addressing the entry of Generators with a capacity of 2 MW or less);
- (b) explicitly permit an ESR to de-rate its capability in order to meet the NYISO's four (4) hour minimum run-time requirement, and requiring an ESR electing to de-rate its capability to perform a Demonstrated Maximum Net Capability test at its de-rated capability; and
- (c) remove the proposed requirement that an Energy Storage Resource that supplies Installed Capacity permit the NYISO to manage the ESR's Energy Level (state of charge) in the Day-Ahead Market. Instead, the NYISO proposed revisions to make each Supplier the default manager of its ESR's Energy Level, consistent with the Commission's instructions.

<sup>11</sup> *December 2019 Order* at P 189.

<sup>12</sup> The NYISO believes the directive in the December 2019 Order was in error for the reasons stated in its Rehearing Request. Commission acceptance of the NYISO's Rehearing Request will improve market outcomes.

Compliance Filing proposed a method that the NYISO believes complies with the Commission’s directive by assessing the NYPA Transmission Adjustment Charges to an ESR that withdraws Energy at the NYISO’s direction, but is not providing a service, and informing transmission owners of the withdrawals so that they can assess Transmission Service Charges for the withdrawals.

2. The December 2019 Order also stated that the NYISO had “not adequately demonstrated that the proposed metering and accounting practices will be sufficient to prevent double payment for charging energy at the retail and wholesale levels,” and required the NYISO to develop market rules to prevent ESRs that are invoiced for Energy withdrawals by a Load Serving Entity from also being invoiced by the NYISO for those same Energy withdrawals.<sup>13</sup> The Compliance Filing proposed new billing and settlement rules that will apply novel terms of service to ESRs and a new rate to be assessed to the associated LSEs.<sup>14</sup>
3. Finally, the December 2019 Order directed the NYISO to include a “basic description of [the] metering methodology” in the NYISO’s Tariffs, as well as references to the specific documents in the ISO Procedures that contain the applicable implementation details.<sup>15</sup> The NYISO added metering rules as required, but the Order also required the NYISO to exercise its judgment in developing the specific metering requirements that must be included, and the level of detail necessary to satisfy the Commission’s directive.

The NYISO is not able to perform a limited implementation of its ESR participation model that would exclude the Tariff provisions that the Commission has not yet accepted. Instead, the NYISO must implement its ESR participation model based on a consistent, cohesive, and comprehensive set of Tariff rules. Because the Commission has not ruled on its Compliance Filing, but has required the NYISO to implement ESRs in its markets by September 30, 2020, the NYISO has, necessarily, already developed software applications, business practice manuals, and other materials (*e.g.*, user guides and operator and market participant training materials) that are consistent with the Tariff revisions accepted by the Commission in the December 2019 Order and the Tariff revisions NYISO proposed in its Compliance Filing.

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<sup>13</sup> *December 2019 Order* at P 200.

<sup>14</sup> *Compliance Filing* at 10.

<sup>15</sup> *December 2019 Order* at P 201.

With regard to how ESRs will be charged for transmission service while they are withdrawing Energy, the NYISO's pending Rehearing Request<sup>16</sup> explains why ESRs should be assessed the same Transmission Usage Charge for transmission service that the NYISO has applied to existing energy storage facilities in its markets since 1999. Although the NYISO believes the Commission should grant its Rehearing Request and accord the NYISO the same treatment that it granted the California ISO, the NYISO is prepared to either (i) implement the Tariff rules proposed in its Compliance Filing (which were developed to achieve the instructions in paragraphs 186 to 189 of the Commission's December 2019 Order), or (ii) implement the rules that the NYISO proposed in its initial (December 3, 2018) compliance filing, should the Commission agree with the NYISO and grant rehearing.

## **II. Motion for Commission Action on Compliance Filing**

The NYISO requests that the Commission act on the pending Compliance Filing by August 4, 2020.<sup>17</sup> The NYISO specifically requests August 4, 2020 to coincide with the NYISO's obligation to submit a two-week advance notification of the Tariff revisions becoming effective. As noted above, the NYISO anticipates the earliest date it will be able to make the Tariff revisions effective is August 19, 2020. As described above, three of the Compliance Filing proposals required the NYISO to interpret the Commission's directives and exercise its judgment to draft Tariff enhancements that meet New York's specific circumstances. Under

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<sup>16</sup> The NYISO timely submitted its Rehearing Request on January 21, 2020. On February 18, 2020, prior to the 30-day statutory deadline for Commission action, the Commission issued a "tolling order" that deferred Commission action on the NYISO's Rehearing Request indefinitely.

<sup>17</sup> The NYISO requests that the Commission act by August 4, 2020 because it is required to submit an informational filing at least two weeks prior to the Tariff revisions desired effective date. Commission action by August 4, 2020 will provide adequate time for the NYISO to be able to submit the required notice and make the tariff revisions effective on August 19, 2020.

Commission precedent, the NYISO is unable to make those Tariff revisions effective without a Commission order “fixing” the rates, terms, and conditions in question.<sup>18</sup>

If the Commission is not able to act on the NYISO’s Compliance Filing before September 15, 2020, then the NYISO will seek an additional extension of time to permit the NYISO to delay the implementation of ESRs in its markets until at least three weeks after the Commission issues an Order on the NYISO’s pending compliance proposal. Requiring the NYISO to implement ESRs in its markets before the Commission acts on its pending Compliance Filing would put the NYISO at risk of committing a Tariff violation that cannot be remedied after-the-fact.<sup>19</sup>

The NYISO further requests that the Commission act on the Rehearing Request by August 4, 2020. Provided the Commission accepts the Compliance Filing, the NYISO will implement the provisions that are accepted by the Commission. Allowing the Rehearing Request to remain pending after NYISO implements ESRs in its markets would create uncertainty and could lead to outcomes that may be difficult, if not impossible, to unwind if the Commission were to, ultimately, grant rehearing. For example, because of the manner in which Transmission Service Charges are assessed in the New York Control Area, a later Order granting rehearing would require the applicable Transmission Owners to refund Transmission Service Charges they

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<sup>18</sup> While the *Ameren Order*’s holding that a Commission order leaving “no uncertainty that could only be removed through acceptance of a compliance filing” effectively fixes the rate, the opposite must also be true: when the Commission’s order leaves room for the exercise of judgment by the affected party, the rate is not “fixed,” and a Commission Order on the compliance proposal is required for the rate to become effective.

<sup>19</sup> On May 21, 2020, the Commission issued a *Proposed Policy Statement on Waiver of Tariff Requirements and Petitions or Complaints for Remedial Relief* that materially impacts the NYISO’s ability to request a retroactive remedy for any tariff violation that occurs if the NYISO implements its proposed tariff revisions prior to receipt of a Commission Order. *Waiver of Tariff Requirements*, Docket No. PL20-7-000 (May 21, 2020). The Commission should not require the NYISO to implement Tariff provisions that have not yet been accepted because the implementation might result in a tariff violation that the Commission would not have the authority to permit the NYISO to remedy.

collected from NYISO Customers that withdraw Energy in real-time to serve Load.<sup>20</sup> NYISO's compliance with the Commission's Order, therefore, would require such Transmission Owners to be capable of unwinding those transactions, and actually doing so, if rehearing were later granted.

### **III. Request for Shortened Answer Period**

The NYISO respectfully requests that the Commission establish a five-day answer period for responses to this motion. Rule 213(d)(1) provides that “[i]f a motion requests an extension of time or a shortened time period for action, then answers to the motion to extend or shorten the time period shall be made within 5 days after the motion is filed, unless otherwise ordered.”

When the Commission adopted Rule 213(d)(1), it explained that, “[s]ince motions regarding time periods are not controversial or complex, five days provides a reasonable time for answers.”<sup>21</sup>

The same is true with respect to the requests herein which pertain solely to the timing of Commission actions.

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<sup>20</sup> See *Compliance Filing* at pp 7-9.

<sup>21</sup> *Filing of Privileged Materials and Answers to Motions*, Order No. 769, 141 FERC ¶ 61,049 (2012) at P 85.

#### IV. Conclusion

For the foregoing reasons, the NYISO respectfully requests Commission action on the Compliance Filing and Rehearing Request by August 4, 2020. Doing so will allow the NYISO to provide the required notice if it is able to make the Tariff revisions effective on August 19, 2020. The NYISO continues to strive to integrate ESRs at the earliest feasible date, and requests prompt Commission action to assist the NYISO in that endeavor.

Respectfully submitted,

/s/Gregory J. Campbell

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July 17, 2020  
Rensselaer, NY

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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 17<sup>th</sup> day of July, 2020.

/s/ Mohsana Akter

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