

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

**New York Independent System Operator, Inc.                    )                    Docket Nos. ER20-1718-001**

**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,<sup>1</sup> the New York Independent System Operator, Inc. ("NYISO"), respectfully submits this request for leave to answer and answer ("Answer"). This Answer responds to the *Limited Protest of the TDI-USA Holdings Corp.* (the "Limited Protest") that was submitted on July 30, 2020.

As discussed below, the Commission should reject the Limited Protest. It should accept the NYISO's proposed enhancements to the "Part A Exemption Test"<sup>2</sup> (the "Part A Enhancements") under the buyer-side capacity market power mitigation measures ("BSM Rules")<sup>3</sup> in the Market Administration and Control Area Services Tariff ("Services Tariff") that the NYISO proposed in its April 30 Filing.<sup>4</sup> The NYISO reiterates its request that the Commission accept the April 30 Filing without any modifications or conditions and make the Part A Enhancements effective on September 8, 2020.

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<sup>1</sup> 18 C.F.R. §385.213 (2020).

<sup>2</sup> The "Part A Exemption Test" and "Part B Exemption Test" are currently described in Section 23.4.5.7.2 of the Services Tariff but they are not defined terms and are not explicitly referred to in the Services Tariff as the "Part A" or "Part B" tests. The proposed tariff revisions in the April 30 Filing would make "Part A Exemption Test" and "Part B Exemption Test" defined terms and standardize references to them throughout the BSM Rules.

<sup>3</sup> The BSM Rules appear at Section 23.4.5.7, *et. seq.* of the Services Tariff.

<sup>4</sup> *Proposed Enhancements to the "Part A Exemption Test" Under the "Buyer-Side" Capacity Market Power Mitigation Measures*, Docket No. ER20-1718-000 (April 30, 2020) ("April 30 Filing").

## **I. REQUEST FOR LEAVE TO ANSWER**

The Commission has discretion to 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.<sup>5</sup> The NYISO should be permitted to answer the Limited Protest to explain why it raises an issue that is outside the scope of this Section 205 proceeding and is unreasonable on the merits. Given the complexity of the BSM Rules, the Class Year Study procedures, and the interactions between them, this answer is necessary to help the Commission to identify the defects in the Limited Protest. The NYISO therefore respectfully requests that the Commission accept this Answer.

## **II. ANSWER**

### **A. The Limited Protest Seeks Relief that Is Beyond the Scope of a Section 205 Proceeding**

This proceeding concerns the Part A Enhancements that were proposed in the April 30 Filing. As the Limited Protest acknowledges, the enhancements principally involve conducting the Part A Exemption Test<sup>6</sup> prior to the Part B Exemption Test and changing the order in which Examined Facilities are evaluated under the Part A Exemption Test.<sup>7</sup>

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<sup>5</sup> 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).

<sup>6</sup> Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff, as modified by the April 30 Filing, or the NYISO’s Open Access Transmission Tariff (“OATT”).

<sup>7</sup> See Limited Protest at 2.

The Limited Protest claims that it is unduly discriminatory that four projects that may qualify as Public Policy Resources (“PPRs”) under the April 30 Filing may receive their exemption or Offer Floor determinations under the BSM Rules (“BSM Determinations”) after the BSM Determinations for Class Year 2019 projects that accept their cost allocation. These four projects entered Class Year 2019 but have elected to undergo Additional System Deliverability Upgrade studies (“Additional SDU Studies”).<sup>8</sup> The Limited Protest states that TDI-USA Holding Corp.’s (“TDI”) Champlain Hudson Power Express project (the “CH Interconnection project”) is one of these four projects.

The NYISO’s June 19 *Response to Deficiency Letter in Docket No. ER20-1718-000* (“Deficiency Response”) noted that the NYISO would evaluate the projects participating in the Additional SDU Studies “under the BSM Rules at a point after the remaining projects in Class Year 2019.”<sup>9</sup> The Limited Protest asks that the NYISO instead be directed to “implement a mechanism through which all Public Policy Resources in CY 2019 – including those that require additional SDU studies – can be evaluated under the BSM rules contemporaneously with all other projects that are entered into this Class Year.”<sup>10</sup>

To be clear, the NYISO’s statement was not based on requirements that were introduced in the April 30 Filing, let alone the Deficiency Response. Instead, the rules specifying that entrants selected to undergo Additional SDU Studies in the Class Year process could have delayed BSM Determinations were established in the NYISO’s “Class Year Redesign”

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<sup>8</sup> Additional SDU Studies were created as part of the NYISO’s “Class Year Redesign” project. The tariff changes, which were developed by the NYISO with extensive stakeholder input that took place throughout 2019, were submitted in Docket No. ER20-638-000 and accepted by a Commission letter order on January 31, 2020.

<sup>9</sup> Deficiency Response, Attachment I at 12; Limited Protest at 3.

<sup>10</sup> Limited Protest at 5.

proceeding.<sup>11</sup> No party objected to those rules in that proceeding.<sup>12</sup> They are not properly before the Commission in this docket. The Limited Protest is therefore raising an issue that is outside the scope of this Section 205 proceeding.

Applicable precedent is also clear that “[u]nder FPA section 205, the Commission is limited to considering the filing before it. . . .”<sup>13</sup> The United States Court of Appeals for the District of Columbia Circuit has similarly noted that “[w]hen acting on a public utility’s rate filing under section 205, the Commission undertakes an essentially passive and reactive role, and restricts itself to evaluating the confined proposal.”<sup>14</sup> The Commission has limited authority to impose modifications on Section 205 filings. Requiring the implementation of the kind of “mechanism” that the Limited Protest would impose on the NYISO is not the kind of limited modification that the Commission may direct under Section 205.

The Commission should therefore reject the Limited Protest because it is procedurally defective. To the extent that TDI wishes to pursue its concerns regarding the treatment of the CH Interconnection project compared to other Class Year 2019 projects, it may only do so by

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<sup>11</sup> The Class Year Redesign tariff changes introduced the Additional SDU Study and the Expedited Deliverability Study. Both were designed to shorten the time required for the majority of projects to complete the NYISO’s interconnection study process. The NYISO made it clear throughout its development of the Class Year Redesign that it was not proposing to change the longstanding rule that BSM Determinations be issued contemporaneous with the NYISO’s identification of the costs required for System Upgrade Facilities and System Deliverability Upgrades. This rule also applies to Examined Facilities that are provided a Project Cost Allocation as part of an Additional SDU Study or a final deliverability and BSM Determination pursuant to an Expedited Deliverability Study.

<sup>12</sup> To the best of the NYISO’s knowledge, TDI did not raise the issue that it now introduces in the Limited Protest at any time during the stakeholder discussions of the proposed Part A Enhancements. There were several stakeholder meetings that addressed the question of how the Part A Evaluations would be conducted and coordinated for Examined Facilities obtaining BSM Determinations as part of a Class Year Study, an Additional SDU Study or an Expedited Deliverability Study. Similarly, no party, including TDI, raised concerns on this point in Docket No. ER20-638-000.

<sup>13</sup> *Midcontinent Independent System Operator, Inc.*, 164 FERC ¶61,069 at P 48 (2018).

<sup>14</sup> *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 at 114-15 (D.C. Cir. 2017).

filing a complaint under Section 206 and/or 306 of the FPA and making the evidentiary showings required of complainants.

**B. Even if the Limited Protest Were Not Procedurally Improper It Should Be Rejected on the Merits**

Even if the Limited Protest were not outside the scope of this Section 205 proceeding, the Commission should reject it on the substantive merits. It is not unduly discriminatory for the four projects subject to Additional SDU Studies to receive later BSM Determinations than other Class Year 2019 projects. The four Additional SDU Study projects have been separated from the other Class Year 2019 projects due to the complexities and uncertainties regarding the manner and the costs of their interconnection. Precedent is clear that it is not unduly discriminatory to treat entities differently when there is a reasoned basis for doing so.<sup>15</sup> In this case, the NYISO's Class Year Redesign filing explained in detail why it is appropriate to separate certain projects from an ongoing Class Year Study to conduct Additional SDU Studies for these projects.

Specifically, in the past, the complexities and time required to design and allocate the costs of System Deliverability Upgrades ("SDUs") frequently delayed projects in the Class Year Study that did not contribute to the deliverability issues that the SDUs resolve. The rules introduced in the Class Year Redesign filing were part of a complex package of reforms that work together to improve and expedite the NYISO's interconnection processes, particularly the Class Year Study. While the Class Year Study rules are closely-integrated with the BSM Rules,<sup>16</sup> the Class Year Redesign did not seek to modify the longstanding rule that BSM

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<sup>15</sup> See, e.g., *Town of Norwood v. FERC*, 202 F.3d 392, 402 (1st Cir. 2000) ("[D]ifferential treatment does not necessarily amount to undue preference where the difference in treatment can be explained by some factor deemed acceptable by the regulators (and the courts).")

<sup>16</sup> See, e.g., *Motion to Intervene and Comments of the New York Independent System Operator, Inc.*, Docket No. ER18-1301-000 at 6-7 (April 18, 2018) ("The initial determination for each Examined Facility is issued prior to the commencement of the Class Year Initial Decision Period."); *Bayonne*

Determinations will be made for Examined Facilities at the end of the interconnection study process when the projects are asked: (1) to accept their Project Cost Allocation for the required System Upgrade Facilities and System Deliverability Upgrades identified by the NYISO in the Class Year Study; or (2) accept their deliverable MW in an Expedited Deliverability Study. Overturning the rules governing BSM Determinations for projects subject to Additional SDU studies would threaten to undo those Class Year Study process improvements. It could undermine stakeholder expectations as to how BSM Determinations will be made for projects in Class Year 2019, as well as the recently started Expedited Deliverability Study. It could also disrupt the NYISO's ability to issue appropriate BSM Determinations because of the iterative nature of the Class Year Study process.

It is not accurate for TDI to suggest that the NYISO could issue a BSM Determination based upon the estimate of SDU costs for the projects in an Additional SDU Study at the time the Class Year Study is completed without harming other projects.<sup>17</sup> The current tariff rules allow an Examined Facility in an Additional SDU Study to withdraw from the study prior to its completion. This would continue to be available to TDI and the other Additional SDU projects under the relief requested, but Class Year Projects would not have this optionality available to them because the Class Year Study would be the completed. TDI's request that a project in an Additional SDU Study receive a BSM Determination along with the Class Year projects that are accepting their cost allocations (and by extension their BSM Determinations) would introduce a great deal of uncertainty in the BSM determinations for the Class Year projects and could adversely impact their BSM Determinations. The complexity associated with the timing of the

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*Energy Center, LLC*, 163 FERC ¶ 61,095 at P 31(2018) (acknowledging NYISO concerns that altering deadlines under the BSM Rules could disrupt the Class Year process).

<sup>17</sup> See Limited Protest at footnote 7.

studies and interactions between the economic decisions faced by the Class Year and Additional SDU Study projects would disrupt the Class Year Study.<sup>18</sup>

Moreover, the Limited Protest is wrong to suggest that granting its requested relief would only cause a “small delay” to Class Year 2019.<sup>19</sup> As the NYISO has previously indicated, it expects to complete Class Year 2019 this September. With the significant influx of projects in the NYISO interconnection queue and the current Class Year’s record number of entrants, doing so is “a major priority for the NYISO and many stakeholders.”<sup>20</sup> Even if it were appropriate to consider adopting the mechanism proposed by the Limited Protest, it would take many months to design, draft, and effectuate necessary tariff changes. This is unavoidable given the complexity of Class Year processes and the BSM Rules as well as the number of interactions between them. The Class Year Redesign filing involved numerous tariff revisions that were developed with extensive stakeholder feedback. The uncertainties and complexities suggested by TDI’s requested relief risks imposing an extensive delay on Class Year 2019 as well as subsequent Class Year Studies. It would also nullify the purpose of the Class Year Redesign, which was to streamline the interconnection process and better manage the unprecedented increase in the number of projects in the interconnection queue.<sup>21</sup> In short, even if there were a meritorious case

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<sup>18</sup> Further, these uncertainties that would be created by TDI’s proposal could adversely impact the projects in that Class Year Study. While these Class Year projects are asked to accept their cost allocation and BSM Determinations or withdraw from the Class Year Study, the Additional SDU Study projects could later withdraw from the Additional SDU Study due to the costs and complexities associated with the applicable deliverability issues that are pending resolution or other external market factors that only became apparent after the Class Year Study and the decisions of the Class Year Study projects becomes final.

<sup>19</sup> See Limited Protest at 5-6.

<sup>20</sup> April 30 Filing at 3.

<sup>21</sup> *Id.*

for TDI's requested relief for the CH Interconnection Project, the equities would not favor the kind of disruption that the request would cause.

### **III. CONCLUSION**

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer, reject the Limited Protest, accept the April 30 Filing without modifications or conditions, and make the April 30 Filing effective on September 8, 2020, as requested in the Deficiency Response.

Respectfully Submitted,

/s/ David Allen

David Allen

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