

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

**Viridity Energy Solutions, Inc.**

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**Docket No. ER21-2395-000**

**MOTION TO INTERVENE AND COMMENTS OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

On July 9, 2021, Viridity Energy Solutions, Inc. (“Viridity”), a Responsible Interface Party<sup>1</sup> (“RIP”) participating in the New York Independent System Operator, Inc. (“NYISO”) Installed Capacity (“ICAP”) market, submitted a request for waiver of a tariff-imposed deadline to submit Special Case Resource (“SCR”) performance data to the NYISO. Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>2</sup> the NYISO moves to intervene and submits comments in the above-captioned proceeding. The NYISO requests that the Commission (i) consider these comments in its evaluation of whether to grant Viridity’s requested relief requested, and (ii) issue an Order by the date requested by Viridity (*i.e.*, August 9, 2021).

**I. Background**

The NYISO’s SCR program is a reliability-based demand response program that is activated in response to: (i) a forecasted reserves shortage, (ii) an ISO declared Major Emergency state, and/or (iii) in response to a request for load relief purposes, or as the result of a

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning set forth in the Market Administration and Control Area Services Tariff (“Services Tariff”).

<sup>2</sup> 18 C.F.R. §§ 385.212 and 385.213 (2020).

local reliability rule. In addition to activation for such events, the NYISO schedules at least one performance test in each Capability Period to confirm the ability of each SCR to meet its capacity obligation.<sup>3</sup> RIPs act as aggregators of individual SCRs to facilitate each resource's participation in the program. The NYISO did not activate its SCR program for an event in the 2020-2021 Winter Capability Period. The first SCR performance test for the Capability Period was conducted on February 25, 2021.

A SCR is obligated to perform in all events and required tests when the NYISO gives the appropriate day-ahead and intra-day notifications.<sup>4</sup> Events and tests meeting these notification requirements are considered "mandatory," and the activated SCRs are required to provide the NYISO with their committed demand reductions. When the NYISO activates the SCR program, RIPs are required to submit hourly interval meter data for each SCR that was required to perform within 75 days (the "Submission Period").<sup>5</sup> If a SCR's performance data is not submitted within the Submission Period, the Services Tariff directs the NYISO to attribute zero performance to that SCR for the event or test.<sup>6</sup> In order to meet its tariff obligation, Viridity, like other RIPs, was required to submit performance data for the February 25 test by 5:00 P.M. on May 11, 2021.

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<sup>3</sup> RIPs have the option for a SCR to use its performance in a mandatory event hour in lieu of performance in the first performance test. Therefore, if a SCR has performed in a mandatory event, the SCR may use its performance in the event as a proxy for its test value and be relieved of the requirement to perform in the first performance test. The SCR has the obligation to perform in the first performance test in the absence of a proxy test value, and resources that meet the appropriate operational characteristics are required to perform in the second performance test.

<sup>4</sup> NYISO Services Tariff § 5.12.11.1. The NYISO is required to provide notice of the potential need to operate twenty-one (21) hours in advance if such notification is provided by 3:00 P.M, or twenty-four (24) hours in advance otherwise, and a notification to operate two (2) hours ahead. The NYISO's compliance with the notification requirements is not at issue in this proceeding.

<sup>5</sup> Services Tariff § 5.12.11.1. *See also*, Installed Capacity Manual §§ 4.4.7, 4.12.4.8.

<sup>6</sup> NYISO Services Tariff § 5.12.11.1.

As acknowledged in its waiver request, Viridity did not validly submit the required data by applicable deadline.<sup>7</sup>

Non-performance of a SCR, attributable either to operational failure or to a failure to submit the required data, results in certain tariff-imposed consequences. Non-performance for an event or test impacts the quantity of Unforced Capacity the SCR is able to sell in the ICAP market, and may result in ICAP shortfalls and related deficiency charges.<sup>8</sup> The effect of these market rules is particularly acute in a Capability Period, such as the 2020-2021 Winter Capability Period, when the NYISO did not activate a SCR event, leaving SCR performance calculations for the entire Capability Period to be measured by performance during a single hour test.

Viridity requests waiver of the requirement in Section 5.12.11.1 of the Services Tariff that a RIP submit SCR performance data to the NYISO by the close of the Submission Period as it relates to the test conducted by the NYISO on February 25, 2021 for the 2020-2021 Winter Capability Period.<sup>9</sup> Granting Viridity's request would allow the NYISO to accept and process the otherwise untimely submitted data.

## **II. Motion to Intervene**

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for Energy, Ancillary Services, and Installed Capacity in New York State. The NYISO further administers various demand response programs in each of those wholesale markets pursuant to Commission-

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<sup>7</sup> Viridity Energy Solutions, Inc. July 9, 2021 Petition for Tariff Waiver at 1 (“Viridity Waiver Request”).

<sup>8</sup> NYISO Services Tariff § 5.14.

<sup>9</sup> Viridity Waiver Request at 1. “Responsible Interface Parties that were requested to reduce Load in any month shall submit performance data to the NYISO, within 75 days of each called event or test, in accordance with ISO Procedures.” Services Tariff § 5.12.11.1.

approved tariffs. In this proceeding, Viridity is requesting a waiver of a tariff-imposed requirement of the NYISO-administered SCR program. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all rights of a party.<sup>10</sup>

### **III. Comments**

The NYISO understands Viridity's waiver request as seeking relief from the requirement in Section 5.12.11.1 of the Services Tariff to timely submit the required resource performance data by the applicable deadline for the February 25, 2021 performance test conducted by the NYISO for the 2020-2021 Winter Capability Period. The Commission evaluates such a waiver request based on the specific facts and circumstances of the request,<sup>11</sup> utilizing a four-part test: (i) whether the requestor has acted in good faith; (ii) whether the request is of limited scope; (iii) whether the request will remedy a concrete problem; and (iv) whether the waiver, if granted, will have undesirable consequences such as harming third parties.<sup>12</sup>

Because the Commission's evaluation of a waiver is highly dependent on the particulars of each request, the Commission has recognized that the granting of one waiver request is not precedent for granting future requests.<sup>13</sup> It is important that the Commission continue to reinforce its case-by-case approach to granting waivers, considering the importance of tariff

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<sup>10</sup> Rule 214(b)(1)-(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(b)(1)-(2) (2020).

<sup>11</sup> See, e.g., *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060, at P 17 (2013).

<sup>12</sup> *New York Power Authority*, 139 FERC ¶ 61,157, at P 28 (2012); *Air Energy TCI Inc.*, 143 FERC ¶ 61,172, at P 16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P 10 (2010).

<sup>13</sup> See, *New York Power Authority*, 139 FERC ¶ 61,157 at P 30 (after finding the requested waiver sufficiently limited to the specific facts presented, the Commission stated that granting the waiver "does not constitute precedent for allowing market participants to avoid these or any other conditions set forth in the Services Tariff.").

deadlines that enhance market certainty and assist the NYISO in administering open and competitive markets.

Based upon (i) the NYISO's review of Viridity's waiver request, (ii) the facts known to the NYISO at this time, (iii) the potential for adverse market impacts, and (iv) Commission guidance on waiver requests, the NYISO does not oppose Viridity's waiver request. The NYISO defers to the Commission on whether Viridity has met its burden of proof, but notes that the facts known to the NYISO at this time corroborate those presented in Viridity's waiver request.

At 4:57 P.M. on May 11, 2021, the last day of the Submission Period, Viridity attempted to upload the required data to the NYISO's Demand Response Information System ("DRIS"). The submission was rejected by the DRIS due to data formatting errors. Viridity attempted to submit the data again at 4:58 P.M., but the data was again rejected due to formatting errors. Viridity attempted to upload the data three more times after the Submission Period closed. Within ten minutes of the 5:00 P.M. submission deadline, Viridity provided the data via email to NYISO staff. In subsequent conversations, Viridity explained that it was unable to submit the data earlier in the Submission Period due to its inability to access the appropriate meter data for certain retail customers of Consolidated Edison Company of New York, Inc. ("Con Edison") that Viridity enrolled in the SCR program.

Although Viridity seeks only a limited waiver of a performance data submission deadline, the NYISO is concerned that a waiver in this proceeding may raise questions regarding the applicability of the data reporting requirements to other RIPS. While the 75-day deadline is administrative, it is, nonetheless, necessary for the NYISO to receive timely performance data from RIPS in order to process and review data from the over 2,500 resources participating in the SCR program. Timeliness helps maintain certainty and transparency, as the data submitted by

RIPs is used, among other reasons, to calculate Installed Capacity shortfalls (*i.e.*, when a SCR provided less capacity than it committed to provide) and performance factors used to determine how much capacity a SCR is eligible to sell in future Capability Periods, as well as to prepare for upcoming Capability Periods.

Offsetting the NYISO's desire for strict adherence to the submission deadline in the instant waiver request is the potential for an undesirable impact to the NYISO's capacity market. If the SCRs Viridity brings to market were to stop participating in the SCR program, the NYISO would expect increased capacity costs which would be borne by New York State consumers.<sup>14</sup> It is important to note that any potential market impact is largely due to the combined effect of two separate factors: (i) Viridity failed to submit performance data for its entire SCR portfolio, and (ii) there was only one hour of data upon which to calculate SCR performance for the 2020-2021 Winter Capability Period due to the absence of any event activations during the Capability Period.

The NYISO's ability to implement the waiver, if granted, depends on the timing of the Commission's action. Following the close of the 2020-2021 Winter Capability Period, NYISO staff began its process of preparing for the 2021-2022 Winter Capability Period, which includes reviewing data and completing the various calculations necessary for all SCRs. If Viridity had not promptly recognized its mistake and brought it to the NYISO's and the Commission's attention, granting a waiver could result in undesirable outcomes. The NYISO urges the Commission to act on Viridity's waiver request as soon as practicable. If the Commission grants

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<sup>14</sup> The size of any market impact would depend on whether the affected SCRs remained in the NYISO-administered markets, and the performance factors reflecting zero performance in the 2020-2021 Winter Capability Period. The NYISO has not yet calculated the performance factor impacts, and therefore cannot provide an estimate of the potential impact on capacity prices.

Viridity's requested relief by August 9, 2021, the NYISO will have sufficient time to: (i) process and review the data; (ii) complete all required calculations prior to the finalization of the 2021-2022 Winter Capability Period performance factors; and (iii) reflect actual performance of the SCR's on Viridity's invoice.<sup>15</sup> If the Commission acts after August 9, 2021, the NYISO may not be able to timely establish the amount of Unforced Capacity for the SCRs Viridity enrolls in the SCR program for the beginning of the 2021-2022 Winter Capability Period, potentially resulting in increased ICAP Market Auction clearing prices compared to the prices that may result if such values were determined in a manner that reflects consideration of the performance data consistent with the relief requested by Viridity.

Based on the facts known to the NYISO at this time, consideration of the potential for undesirable market impacts absent remedial action, and the promptness of Viridity's discovery and notification of its error, the NYISO does not oppose Viridity's waiver request.

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<sup>15</sup> Viridity is eligible to receive Energy payments for the actual load reduction provided by its resources during the February 25, 2021 performance test. *See* Services Tariff § 5.12.11.1. In order to maintain compliance with the NYISO's market settlement rules, the meter data must be submitted into DRIS and provided to the NYISO's market settlements department by September 29, 2021, and posted for Market Participant review by October 6, 2021. A Commission Order by August 9, 2021, and prompt submission of the data by Viridity, would enable the NYISO to meet these deadlines.

#### **IV. Communications and Correspondence**

All communications and service with regard to this filing should be directed to:

Robert E. Fernandez, Executive Vice President & General Counsel  
Karen G. Gach, Deputy General Counsel  
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#### **V. Conclusion**

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) grant this motion to intervene, and (ii) consider these comments in making its decision on Viridity's request.

Respectfully submitted,

/s/ Gregory J. Campbell  
Gregory J. Campbell  
Senior Attorney  
New York Independent System Operator, Inc.

cc: Janel Burdick  
Matthew Christiansen  
Jignasa Gadani  
Jette Gebhart  
Leanne Khammal  
Kurt Longo  
John C. Miller  
David Morenoff  
Douglas Roe  
Frank Swigonski  
Eric Vandenberg  
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 16<sup>th</sup> day of July, 2021.

/s/ Mohsana Akter

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