

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

Duty of Candor

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Docket No. RM22-20-000

COMMENTS OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to the Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (“Commission”) on July 28, 2022 in the above-referenced docket (“Candor NOPR”),¹ the New York Independent System Operator, Inc. (“NYISO”) hereby submits its comments in response to the Candor NOPR.² The NYISO generally supports the reforms proposed by the Commission. However, the NYISO respectfully requests that the Commission apply a more relaxed standard to the broad range of data that ISOs and RTOs programmatically provide to the Commission in accordance with Order No. 760 and other automated data submission requirements. ISOs and RTOs regularly update and improve their market software, settlement software and associated databases to implement improvements to their markets and to enhance their capabilities. Such software and database changes can impact the data that ISOs and RTOs report to the Commission. In the NYISO’s experience, implementing software or database improvements occasionally results in temporary errors or omissions in reported data that the NYISO corrects after they are identified.

¹ *Duty of Candor*, 180 FERC ¶ 61,052 (2022).

² Capitalized terms not otherwise defined herein shall have the meaning specified in the Candor NOPR, or in Section 1 of the NYISO Open Access Transmission Tariff (“OATT”) and Section 2 of the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”).

I. COMMUNICATIONS AND CORRESPONDENCE

All communications and correspondence concerning these comments should be directed to:

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II. COMMENTS

A. Market Participants Should be Truthful in their Communications with Covered Organizations

The NYISO supports the Commission's goal of ensuring the accuracy of communications related to matters that are subject to its jurisdiction. The decisions that the NYISO makes in administering its markets rely on the NYISO receiving accurate communications from its Market Participants. The Commission should have the authority it needs to act when parties do not communicate with the Commission or ISOs and RTOs accurately. When a Market Participant provided inaccurate and misleading information to the NYISO's Market Mitigation and Analysis Department, the Commission and its Office of Enforcement took action to address both the

misrepresentations and the underlying market behavior.³ The NYISO believes the Commission made the correct decision in that case.

B. Standard for Automated Submission of Data to the Commission by ISOs and RTOs Pursuant to Order No. 760 and Similar Requirements

To comply with Order No. 760 and other Commission requirements, the NYISO transmits significant amounts of market data and other information to the Commission in an automated manner each day. The obligation to provide required data consistent with an approved data submission structure also applies to the other jurisdictional ISOs and RTOs. The data that the NYISO provides to the Commission each day is gathered programmatically, is voluminous, and spans all of the NYISO's markets. Based on the broad definition of a "communication" in the Candor NOPR,⁴ the NYISO expects that the Duty of Candor will apply to its submissions when the new regulations take effect.

Given the breadth and scope of the data that ISOs and RTOs are required to submit each day, and risks tied to potential transmission anomalies which may impact the completeness or accuracy of data submittals, it is not always possible to ensure that the submissions are 100% complete or 100% accurate. In particular, the NYISO's prior experience indicates that when changes to market, settlement, database, or related software are made, it may take some time to discover that data is no longer being programmatically provided, or that some of the data being provided is no longer the desired data. While the NYISO has been fully compliant with the requirements of Order No. 760, has made extensive efforts to develop the tools and processes

³ See *Constellation Energy Commodities Group, Inc., Order Approving Stipulation and Consent Agreement*, at P 23, 138 FERC ¶ 61, 168 (2012).

⁴ "[W]e intend to interpret the term "communication" broadly, including informal and formal communications, verbal or written, and via any method that may be used for transmission." Candor NOPR at P 41.

necessary to support necessary data collection and transmittal processes, and has worked effectively with Commission Staff to identify and address data errors or omissions when they have occurred, errors or omissions do occasionally occur. At times, the errors can be difficult to discover, because (for example) the information provided appears consistent with previous submissions, but it may not be drawn from the equivalent data source.

Years of experience programmatically submitting data to the Commission has demonstrated to the NYISO that it is not possible to perfectly achieve the Order No. 760 data submission requirements at all times, so a Duty of Candor standard that determines a violation occurred and requires the ISO or RTO to demonstrate it exercised due diligence to prevent the error or omission is not a just and reasonable standard to impose on ISOs and RTOs. Instead of declaring a violation of the Duty of Candor and requiring the ISO or RTO to demonstrate that it exercised due diligence in each instance, the NYISO respectfully requests that the Commission's regulation excuse errors that are introduced into the Order No. 760 data (and other programmatic data submissions by ISOs and RTOs), so long as (1) the errors or omissions were not recklessly introduced by the ISO or RTO, and (2) the ISO or RTO exercises due diligence to correct errors or omissions after they are discovered.

III. CONCLUSION

The NYISO respectfully requests that the Commission consider these comments in formulating any final rule in this proceeding.

Respectfully submitted,

/s/ Alex M. Schnell

Alex M. Schnell

Assistant General Counsel /

Registered Corporate Counsel

New York Independent System Operator, Inc.

Dated: November 10, 2022

cc: Janel Burdick
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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 10th day of November 2022.

/s/ Elizabeth Rilling

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