

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER23-2040-00_

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and answer (“Answer”). The Answer responds to certain issues raised in comments and protests¹ submitted in response to the NYISO’s June 1, 2023, filing in this proceeding (“June 1 Filing”).² For the reasons described below, the Commission should reject the comments and protests in their entirety and accept the June 1 Filing without modification.

I. Request for Leave to Answer

The NYISO may answer pleadings that are styled as comments as a matter of right.³ The Commission also has discretion to accept, and routinely accepts, answers to protests where they help clarify complex issues, provide additional information, are helpful to the development of the record in a proceeding, or otherwise assist in the decision-making process.⁴ The

¹ The following parties submitted protests or comments to the Compliance Filing: Advanced Energy Management Alliance and Advance Energy United (collectively, “Trade Associations”), and the New York Public Service Commission.

² New York Indep. Sys. Operator, Inc. June 1, 2023 Filing, Docket No. ER23-2040-000.

³ See 18 C.F.R. § 385.213(a)(3).

⁴ See, e.g., *New York Indep. Sys. 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 Indep. Sys. 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); *Northwestern Corp.*, 179 FERC ¶

NYISO's Answer to Trade Associations' protest in this proceeding satisfies those standards and should be accepted because it addresses inaccurate and misleading statements, and provides additional information that will help the Commission fully evaluate the arguments in this proceeding.⁵ The NYISO, therefore, respectfully requests that the Commission accept this Answer.

II. Answer

A. The NYISO's proposed Distributed Energy Resource minimum capability requirement is necessary to maintain efficient market operations and is not unduly discriminatory.

The NYISO's 2019 DER and Aggregation⁶ participation model was designed to allow individual facilities (DER) to combine their capabilities to form an Aggregation and offer those combined capabilities as a single unit.⁷ Aggregations will be scheduled, dispatched, and settled as a whole.⁸ Aggregators are the Market Participants responsible for managing Aggregation operations in the NYISO-administered markets.⁹

61,131, at P 13 and n.13 (2022) ("Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, we will accept Northwestern's and the Businesses' answers because they provide information that has assisted in our decision-making.") (citing 18 C.F.R. § 385.213(a)(2)); *Tenn. Gas Pipeline Co., LLC*, 178 FERC ¶ 61,119, at P 20 (2022) ("Although the Commission's Rules of Practice and Procedure do not permit answers to protests and answers to answers, we will accept the Applicants' and Municipals' answers because they provide information that has assisted in our decision-making.") (citing 18 C.F.R. § 385.213(a)(2)); *New Fortress Energy LLC*, 174 FERC ¶ 61,207, at P 7 ("The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers; however, we find good cause to waive our rules and accept the answers because they provide information that has assisted in our decision-making process.") (citing 18 C.F.R. § 385.213(a)(2)).

⁵ In the interest of limiting the scope of this Answer, the NYISO does not address all issues raised in comments and protests submitted in response to the Compliance Filing. The fact that the NYISO is not responding to all issues raised by parties should not be construed as agreement therewith.

⁶ Capitalized terms that are not defined in this filing shall have the meaning specified in Section 2 of the Services Tariff and Section 1 of the OATT.

⁷ Accepted Services Tariff Sec. 4.1.10.

⁸ *Id.*

⁹ *Id.* at Sec. 2.1 (definition of "Aggregator").

The June 1 Filing proposed to require individual DER participating in an Aggregation to have a minimum capability of at least 10 kW.¹⁰ Doing so will reduce the volume of individual DER enrollments—and the administrative oversight they require—without excluding a materially significant amount of DER capability. The individual DER minimum capability requirement therefore balances the need for efficient administration of the NYISO-administered wholesale markets with the value that small facilities can reliably provide the bulk power system.

As the June 1 Filing explained, the NYISO’s DER and Aggregation market rules contemplate a considerable amount of manual work for NYISO staff, “such as components of the DER and Aggregation registration and enrollment process, as well as monitoring and verifying individual DER performance,” which will need to be completed within expected timeframes.¹¹

Trade Associations protest the 10 kW minimum capability proposal, claiming that the NYISO’s proposal is an unjust and unreasonable barrier to entry.¹² Trade Associations argue that the NYISO’s position is unsupported, and that it is unclear why the NYISO will need to collect and track information on individual DER comprising an Aggregation because the Aggregation participates as a single resource.¹³

As described below, the fact that the DER and Aggregation participation model will schedule, dispatch, and settle Aggregations as a single Resource does not eliminate the need for the NYISO to obtain, review, and verify individual DER data to determine how an Aggregation

¹⁰ June 1 Filing at 5-7.

¹¹ *Id.* at 6.

¹² Advanced Energy United and Advanced Energy Management Alliance June 22, 2023 Protest and Comments at 6 (“Trade Associations Protest”).

¹³ *Id.* at 4.

can participate in the wholesale markets, and whether an Aggregation is capable of reliably providing the services that it offers. Market rules requiring the collection and tracking of individual DER data were accepted as just and reasonable by the Commission in Docket No. ER19-2276-000, *et. al.* It is these individual DER touchpoints (as Trade Associations describes them), which are necessary to implement the rules already accepted by the Commission, that give rise to the NYISO's 10 kW minimum capability proposal.

- i. The 2019 DER and Aggregation participation model requires collection and review of individual DER physical and operating data to inform Aggregation physical and operating capabilities.

Trade Associations argue that the NYISO “appears to envision a significant number of touchpoints at the individual DER level, rather than engaging with and measuring performance of the [Aggregation].”¹⁴ As noted on page 2 of this Answer the NYISO *will* engage with Aggregators (as the NYISO Market Participant) and Aggregations to address market participation by and the operation of the wholesale market Resource. However, that does not obviate the need for the NYISO to understand and monitor the capability and performance of individual DER within Aggregations.

Individual DER data is needed to verify Aggregation compliance with NYISO market rules. For example, review of the individual DER in an Aggregation allows the NYISO to determine whether the Aggregation is a DER Aggregation (*i.e.*, a heterogeneous or Demand Side Resource-only Aggregation) or a single Resource type Aggregation (*e.g.*, an Energy Storage Resource Aggregation).¹⁵ It will also allow the NYISO and the applicable Distribution

¹⁴ *Id.* at 4.

¹⁵ New York Indep. Sys. Operator, Inc., Proposed Tariff Revisions Regarding Establishment of Participation Model for Aggregations of Resources, Including Distributed Energy Resources, and Proposed Effective Dates, Docket No. ER19-2276 (Jun. 27, 2019) at 23-25 (“2019 DER and Aggregation Filing”); Accepted Services Tariff Sec. 4.1.10.1.

Utility to verify that the individual DER comprising the Aggregation are electrically connected to the same Transmission Node,¹⁶ enable the NYISO to verify that the same DER is not enrolled in more than one Aggregation or more than one NYISO participation model (*e.g.*, it is not simultaneously enrolled in an Aggregation and in one or more of the NYISO’s demand response programs),¹⁷ and know which individual DER are engaged in dual participation.¹⁸ These individual DER data touchpoints are critical to developing the NYISO’s record of each Aggregation’s market participation opportunities, capabilities, and any potential operating restrictions.

To support these and other market rules, the NYISO has spent more than fifteen months working with its stakeholders to develop the business practice manual provisions that detail how the DER and Aggregation participation model will be implemented. The resulting revisions detail NYISO staff’s engagement with individual DER. Beginning when an Aggregator submits a new Aggregation enrollment request,¹⁹ NYISO staff will, for example:

- review each DER in an Aggregation to confirm that the Aggregator has a contractual right to represent the DER in the NYISO-administered markets;²⁰

¹⁶ 2019 DER and Aggregation Filing at 25-26; Accepted Services Tariff Sec. 4.1.10.2.

¹⁷ Accepted Services Tariff Sec. 4.1.10.1 (“Aggregators shall not offer any Resource as part of an Aggregation that is participating in the ISO Administered Markets in a different Aggregation or as an individual Resource.”).

¹⁸ *Id.* at Sec. 4.1.11. Dual participation is the simultaneous participation in the NYISO-administered markets and in a market or program operated to meet the needs of distribution systems located in the New York Control Area.

¹⁹ Once an Aggregator submits a complete set of DER enrollment data, the Distribution Utility safety and reliability review process will begin. While this will not be a NYISO process, it is important to note that New York’s Distribution Utilities will have a limited time to review each DER for safety and reliability (expected to be 60 days or less under the 2019 DER and Aggregation participation model, and no longer than 60 days once the NYISO’s Order No. 2222 compliance tariff revisions become effective). The NYISO expects that Distribution Utility review of DER that intend to inject Energy will require more extensive review than for DER that supply demand response. However, the Distribution Utilities will be responsible for reviewing each DER connecting to its electric facilities. June 1 Filing at 4-5.

²⁰ New York Indep. Sys. Operator, Inc., Aggregation Manual Sec. 4.2 (Jun. 2023), *available at* <https://www.nyiso.com/documents/20142/2925061/M-XX-Aggregation-Manual-DRAFT.pdf> (“Aggregation

- check the DER’s utility bill to confirm the DER’s physical location, utility account number, zone, and metering infrastructure information (this data is especially important when evaluating the enrollment of DER that participate via load reductions, which are not required to have an interconnection agreement);²¹
- for each Demand Side Resource, review a Load Reduction Plan; and ²²
- for each DER that will inject Energy onto a distribution system, review the interconnection agreement (as required by the applicable Distribution Utility’s interconnection procedures or the New York State Standardized Interconnection Requirements) and compare the data included in the interconnection agreement with the physical and operating data the Aggregator enters in the NYISO’s Aggregation System to verify that the DER’s enrollment data are consistent with the applicable interconnection agreement.²³

These manual processes are not (and likely cannot reasonably be) automated.²⁴

Manual”). The Aggregation Manual will be presented to the NYISO’s Business Issues Committee (“BIC”) for final review and approval on July 12, 2023. The Aggregation Manual has been presented to stakeholders multiple times from March 2022 through present. BIC approval is necessary for the Manual to become effective, and the NYISO does not expect any material revisions to the Aggregation Manual prior to BIC approval.

²¹ The NYISO proposed and the Commission accepted as just and reasonable, a list individual DER data that must be submitted upon DER enrollment for the purposes of compliance with Order No. 2222. New York Indep. Sys. Operator, Inc. Nov. 14, 2022 Compliance Filing, Docket No. ER21-2460-000, *et al.*, at 13 (proposing to add new Services Tariff Sec. 4.1.10.7.1.4 identifying all of the physical and operational data required for DER enrollment). The NYISO will require Aggregators to submit of the majority of these DER physical and operational data when enrolling individual DER in the 2019 DER and Aggregation participation model. The list of data will be included in the forthcoming Aggregation System Users Guide.

²² Aggregation Manual Sec. 4.4.3. A Load Reduction Plan is the sequence of steps that a Demand Side Resource intends to follow when directed to reduce Load, and the amount of Load reduction (kW) expected to be achieved by each step. Load Reduction Plans are also required for participation in the SCR program. While these plans share common elements, each plan is reviewed individually by NYISO staff to, for example, confirm that the Load reduction capability a SCR offers in the ICAP market does not exceed the sum of the Load reductions expected from each step of the Load Reduction Plan.

²³ *Id.* at Sec. 4.1.1.2.

²⁴ The examples provided herein are not a complete set of the manual work that the NYISO will undertake to enroll and manage DER. The NYISO continues to develop the internal procedures necessary to administer the DER and Aggregation participation model, and, in addition to the items identified in the body of this Answer, the

Trade Associations argue that “[u]ntil stakeholders have a clearer understanding of why NYISO envisions a need for significant touchpoints with individual component DERs, and a better sense of which parts of NYISO’s work will be done manually, it is impossible to evaluate the validity of NYISO’s concerns or the steps needed to overcome them.”²⁵ Respectfully, the aforementioned implementation details have been the subject of extensive engagement between the NYISO and its stakeholders in the NYISO’s open and transparent shared governance process.²⁶ Associated NYISO manuals that address implementation details reflect significant input by stakeholders, and are subject to shared governance approval.²⁷ It is through similar engagement in the same shared governance process that the tariff revisions contained NYISO’s June 1 Filing received unanimous approval by stakeholders.

NYISO will also, for each individual DER participating in an Aggregation: review the one-line diagram of the facility, review the Meter Authority of the facility and Aggregation, review any alternate telemetry proposal when the DER is smaller than 100 kW, review documentation regarding its ambient condition dependent properties when the DER is a temperature-sensitive unit, review generating units to determine if they are Energy or Capacity Limited Resources, collect and review all ICAP market documentation, confirm whether one or more DER in the Aggregation are Energy Storage Resources whose Energy withdrawals are invoiced by the applicable Load Serving Entity (and therefore cannot be invoiced by the NYISO), and work with the applicable Distribution Utility to exchange enrollment information and maintain a common understanding of the DER’s capabilities and any distribution system limitations. These are processes that the NYISO will use in the typical DER enrollment and do not begin to address the work necessary to resolve complications that arise during the enrollment process. Verification processes do not end once a DER is enrolled in an Aggregation. Changes to certain DER attributes after enrollment (*e.g.*, alternate telemetry plan, Energy duration for storage assets, whether a storage asset is invoiced by its Load Serving Entity, its Energy Limited or Capacity Limited Resource designation, its Capacity Resource Interconnection Service (“CRIS”) value, Meter Authority, GADS data, nameplate rating (MW and MWh), Non-NYISO interconnection unique ID, Physical Lower Storage Limit, Physical Upper Storage Limit, Service Address, total capability, injection capability, load reduction capability, withdrawal capability, temperature sensitivity, and Transmission Node) will trigger NYISO review and corroboration by supporting documentation provided by the Market Participant or another authoritative source.

²⁵ Trade Associations Protest at 5.

²⁶ See *DER Manual Updates*, Business Issues Committee Presentation (Jul. 12, 2023) at 5-6, *available at*: <https://www.nyiso.com/documents/20142/38678072/DER%20Manuals%20Updates%20BIC%20Presentation.pdf> (identifying the dates of the Working Group meetings at which the enumerated business practice manual was discussed with NYISO stakeholders).

²⁷ See, *e.g.*, *Aggregation Manual Updates*, Installed Capacity Working Group Presentation (Apr. 27, 2023) at 5-9, *available at*: <https://www.nyiso.com/documents/20142/37254128/Aggregation%20Manual%20Updates.pdf>.

Trade Associations further contend that “NYISO has provided insufficient evidence to support its claim that allowing residential DERs to access the NYISO markets is unworkable.”²⁸ They claim that the NYISO must “enumerate” in detail the specific reasons why the work involved in “monitoring and verifying individual DER performance...when Aggregations with hundreds, or more than a thousand, very small, individual DER enroll in the NYISO-administered markets” would be difficult and time-consuming.²⁹ Trade Associations would require the NYISO to do far more than what is required under section 205 of the Federal Power Act. The Commission has routinely accepted evidentiary showings by Independent System Operators and Regional Transmission Organizations comparable to what the NYISO included in the June 1 Filing.³⁰ This is especially true when, as in this proceeding, the scope of market enhancements must be narrowed (or their implementation delayed) based on technical complexities or other practical implementation difficulties.³¹

ii. NYISO’s individual DER review period is time-limited.

Adding to the NYISO’s concern is the limited amount of time in which NYISO staff are expected to complete these processes. Under the tariff revisions proposed in the June 1 Filing, Market Participants must provide the NYISO with at least thirty (30) days’ notice of its intent to enter or change an Aggregation.³² For a DER that is changing its Aggregation, the enrollment

²⁸ Trade Associations Protest at 3.

²⁹ *See Id.*

³⁰ The justification for the 10-kW minimum set forth in the June 1 Filing is reinforced below by section II.A.ii of this Answer.

³¹ *New York Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101, P 23 (2022); *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, 61,285 (2015); *New York Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER21-2460-004 (Dec. 1, 2022); *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,143, 62,087 (2023) (accepting a five MW maximum capacity threshold based on PJM’s justification of greater visibility needs and operational control to maintain reliability). *See generally Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 62,237 (2018).

³² Accepted Services Tariff Sec. 4.1.10.3; June 1 Filing at 9. Please note that DER and Aggregations may only begin participating in the NYISO-administered markets at the beginning of a calendar month. Therefore, depending on when a Distribution Utility completes its review and provides the results of that review to the

and administrative work necessary to move a DER from one Aggregation to another Aggregation must be completed within fifteen to twenty-five days to enable the DER's capability to be reflected in the new Aggregation at the beginning of the month that follows the expiration of the thirty-day window.

When a DER enters an Aggregation for the first time, the process is more extensive, thorough, and complicated. For new DER, the NYISO expects to complete its DER enrollment procedures after the conclusion of Distribution Utility review. Again, the NYISO needs to complete these processes within fifteen to twenty-five days of the month prior to the DER's market entry so that the results can be appropriately reflected in the Aggregation's operating parameters and the NYISO can inform Distribution Utilities of DER that will be enrolled and operating on their distribution system.

As described in the June 1 Filing, the NYISO proposed the 10 kW minimum capability requirement due to concerns about its ability to timely complete these processes when a large volume of individual DER seek to enroll and/or change Aggregations at the same time.³³ Should the Commission reject the June 1 Filing's 10 kW minimum capability proposal, there is significant risk that the NYISO will not be able to meet the thirty-day administrative timelines described herein, and for DER to be prevented from entering the market until the enrollment processes can be completed.

NYISO, the time between the completion of the Distribution Utility Review and the DER's participation may be longer than thirty days.

³³ June 1 Filing at 6.

- iii. NYISO’s experience integrating small end-use consumers in its demand response programs illustrates how the costs of integrating DER with a capability less than 10 kW outweigh the benefits at this time.

Small end-use customers currently have (and will continue to have) the opportunity to provide Demand Reductions as Special Case Resources (“SCR”) both individually and as part of a Small Customer Aggregation (“SCA”), which does not have a minimum individual resource size requirement. However, experience with the SCR program and SCAs played a role in the NYISO’s decision to establish a minimum capability for individual facilities.

The SCR program is one of four demand response programs operated by the NYISO. This reliability-based demand response program permits SCRs to offer Unforced Capacity into the NYISO’s ICAP market as ICAP Suppliers. SCRs are enrolled by Responsible Interface Parties (“RIPs”)—which are akin to Aggregators in the DER and Aggregation participation model—that serve as the interface between the NYISO and the SCRs.

SCAs are a type of participant in the SCR program. SCAs permit RIPs to aggregate small end-use consumers for the purpose of participation in the wholesale markets. Typically, these small end-use consumers do not have metering infrastructure that complies with the NYISO’s measurement and verification requirements. The NYISO therefore developed a separate set of requirements for SCAs that permit the use of alternative metering and performance measurement (similar to how the 2019 DER and Aggregation participation model permits DER smaller than 100 kW to design and utilize an alternative telemetry scheme, subject to NYISO approval³⁴). RIPs enrolling participants in a Small Customer Aggregation must

³⁴ See 2019 DER and Aggregation Filing at 59 n. 180 (noting that the NYISO’s proposal provided flexibility to facilities under 100 kW to develop alternative measurement and verification tools to avoid installing more costly hardware and software required of conventional resources); Accepted Services Tariff Sec. 13.3.3 (requiring Aggregators to ensure all measurements for metering and telemetry for individual DER derive from either directly measured or calculated values).

propose, and the NYISO must approve, a methodology for measuring aggregation performance. Doing so requires NYISO staff to undertake enrollment, monitoring, and verification efforts that exceed what is necessary for a “typical” SCR and SCR aggregation. The NYISO also contacts the applicable Transmission Owner (typically each month) to confirm that the NYISO has been provided an accurate account number. Though cumbersome, the SCR program rules permit very small end-use customers to participate in the NYISO-administered wholesale markets.

The NYISO’s DER minimum capability proposal is intended to help NYISO staff focus its efforts on enrollment and verification of DER that provide the greatest benefit to the NYCA and New York electric consumers. As of July 2023, there were 7,247 end-use customers in Zone J (New York City) participating in the SCR program. In total, these end-use customers provide 384.6 MW of available Unforced Capacity (“UCAP”). Of these end-use customers, 5,455 have less than 10 kW of capability (measured as “declared value” in NYISO terminology), and provide 2.8 MW of UCAP. Split evenly, this equates to approximately 512 *watts* of Demand Reduction capability per small end-use customer in a system with a 2023 forecasted peak demand of over 32,000 MW.³⁵ In total, end-use customers with a capability of less than 10 kW make up 75.3% of all Zone J SCR program *facilities* and provide 0.73% of Zone J SCR *capability*.

The NYISO is sympathetic to concerns that small end-use consumers that will be precluded from entering the wholesale markets through an Aggregation. But, considering the volume of work that will be necessary to integrate DER, the NYISO believes it would be a more efficient use of staff time to focus on facilities that bring greater capability to the market for the

³⁵ New York Indep. Sys. Operator, Inc., *2023 Load & Capacity Data Report*, Table I-1c (Summary of NYCA Baseline Summer Coincident Peak Demand Forecasts – MW), *available at*: <https://www.nyiso.com/documents/20142/2226333/2023-Gold-Book-Public.pdf>.

same or similar effort. Trade Associations’ work through their member organizations to integrate DER and other advanced energy technologies into New York’s wholesale electric markets has benefitted the NYISO’s market design process. But, at this time, the NYISO is not able to efficiently integrate these resources given its current technological capabilities and its available staff resources.

As explained in the June 1 Filing, the NYISO has begun its Engaging the Demand Side project and has committed to evaluating the ability of small facilities to provide wholesale market services as part of an Aggregation. On May 23, 2023, the NYISO presented a summary of feedback it has received on end-use consumer participation in the 2019 DER and Aggregation participation model, which included comments regarding (i) the NYISO’s six-second telemetry requirements, (ii) the Day-Ahead Energy Market bidding obligation for ICAP Suppliers, and (iii) the dispatch-only model for Aggregations. The NYISO will issue a report later this year describing this feedback and, where practical, identifying potential responses to issues raised. For the reasons discussed in this Part II(A) of this [answer], the Commission should reject Trade Associations’ protest of the NYISO’s minimum DER capability proposal.

B. Trade Associations’ Protest of the NYISO’s metering and telemetry requirements mischaracterize the tariff modifications proposed in the June 1 Filing and is outside the scope of this proceeding.

Trade Associations argue that NYISO proposes to “[e]liminat[e] the option for aggregations of the same resource type to utilize a MSE.”³⁶ As discussed below, this argument mischaracterizes the NYISO’s proposal, is outside the scope of this proceeding, and the

³⁶ Trade Associations Protest at 3.

Commission should prevent Trade Associations from re-litigating an issue that has been decided on the merits Docket No. ER19-2276-000, *et al.*

The 2019 DER and Aggregation Filing proposed “to revise Section 13 of the Services Tariff to establish a new framework pursuant to which an *Aggregator of a DER Aggregation*, Curtailment Service Provider, or Responsible Interface Party participating in the NYISO-administered markets may obtain wholesale metering and/or meter data services from either: (i) the Member System in which Transmission District the entity is located, or (ii) a new third-party entity—Meter Services Entity” that complies with the applicable requirements [emphasis added].³⁷ The NYISO further proposed that single Resource type Aggregations be “subject to the existing metering and telemetry rules for that Resource type,” which includes the requirement to use the applicable Member System.³⁸ Thus, the NYISO made clear that only “Responsible Interface Parties, Curtailment Services Providers, and *Aggregators of DER Aggregations*” [emphasis added] are permitted to utilize Meter Services Entities.³⁹

The two members of the Trade Associations—*i.e.*, AEMA and AEU (which was named “Advanced Energy Economy” at the time)—both submitted timely interventions in the 2019 DER and Aggregation Filing Docket.⁴⁰ In fact, both parties filed timely comments,⁴¹ Answers

³⁷ 2019 DER and Aggregation Filing at 52-53.

³⁸ *Id.* at 60.

³⁹ *Id.* at 52.

⁴⁰ *New York Indep. Sys. Operator, Inc.*, Order Accepting Tariff Revisions and Directing Compliance Filing and Informational Report, 179 FERC ¶ 61,033 at P 24 (Jan. 23, 2020) (“DER Order”).

⁴¹ Advanced Energy Management Alliance, Advanced Energy Economy, Consumer Power Advocates, Energy Spectrum, Inc., Natural Resources Defense Council (NRDC), Sustainable FERC Project, the New York Battery & Energy Storage Technology Consortium (NY-BEST) July 18, 2019 Comments, Docket No. ER19-2276-000.

to comments and protests,⁴² and an Answer to an Answer.⁴³ Although Trade Associations commented on the NYISO's metering requirements, those comments did not address the proposed rules that only RIPs, Curtailment Service Providers, and Aggregators of DER Aggregations, be eligible to utilize a Meter Services Entity.

In its January 23, 2020 Order on the 2019 DER and Aggregation Filing, the Commission stated that "NYISO's Meter Services Entity proposal includes a process for allowing third parties to read and report meter data to NYISO. NYISO has proposed eligibility criteria, an application and approval process, and oversight and validation procedures for Meter Services Entities. We find NYISO's proposal to be just and reasonable because it will ensure that Meter Services Entities provide accurate meter data to NYISO."⁴⁴

The June 1 Filing did not propose to modify the substantive rules regarding the use of a Meter Services Entity. Trade Associations correctly note that the NYISO proposed to add new Services Tariff Section 13.3.1.4 (the addition of which Trade Associations did not protest), and that proposed section states that "Single Resource Type Aggregations ... may only use the applicable Member System."⁴⁵ The change to the NYISO's market rules made by the addition of that section, however, is that an Aggregation must utilize the same Meter Authority for an entire Aggregation. The NYISO did not propose a new rule related to the type of Meter

⁴² Advanced Energy Management Alliance, Advanced Energy Economy, Consumer Power Advocates, Energy Spectrum, Inc., Energy Storage Association, Natural Resources Defense Council (NRDC), Sustainable FERC Project, the New York Battery & Energy Storage Technology Consortium (NY-BEST) August 2, 2019 Motion for Leave to Answer and Answer to the Comments and Limited Protest of Eastern Generation, LLC and Helix Ravenswood, LLC, Docket No. ER19-2276-000.

⁴³ Advanced Energy Management Alliance, Advanced Energy Economy, Consumer Power Advocates, Energy Spectrum, Inc., Energy Storage Association, Natural Resources Defense Council (NRDC), Sustainable FERC Project, the New York Battery & Energy Storage Technology Consortium (NY-BEST) August 23, 2019 Motion for Leave to Answer and Answer, Docket No. ER19-2276-000.

⁴⁴ DER Order at P 72.

⁴⁵ June 1 Filing at 13; Proposed Services Tariff Sec. 13.3.1.4.

Authority a single Resource type Aggregation is permitted to use. In fact, the June 1 Filing explicitly stated that “the NYISO proposes to add ‘DER’ to the Section 13.3 title. This change clarifies the NYISO’s original intent that Section 13.3.1 apply only to DER Aggregations. Single Resource type Aggregations (except Aggregations comprised only of Demand Side Resources) are required to obtain metering and meter data services from the applicable Member System.”⁴⁶ The Trade Associations’ protest is outside the scope of this proceeding because it impermissibly seeks to modify a separate proposal made under Section 205 of the Federal Power Act.⁴⁷

Trade Associations have also not identified any changed circumstances that necessitate revisiting the Commission’s Order on the 2019 DER and Aggregation Filing and should be prohibited from re-litigating this issue.⁴⁸ The NYISO respectfully requests that the Commission affirm that the rules regarding use of Meter Services Entities remain just and reasonable.

⁴⁶ *Id.* at 12.

⁴⁷ The Commission has limited authority to modify section 205 filings. The United States Court of Appeals for the District of Columbia Circuit has emphasized 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.” *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 at 114-15 (D.C. Cir. 2017). *See also, Midcontinent Independent System Operator, Inc.*, 164 FERC ¶61,069 at P 48 (2018) (“Under FPA section 205, the Commission is limited to considering the filing before it. . . .”); *ISO New England Inc. and New England Power Pool*, 129 FERC ¶ 61,008 at P 30 (2009) (finding, in response to protesters’ request to modify tariff provisions addressing mitigation reference level calculations, that the request was “beyond the scope of this proceeding” because “Filing Parties are not proposing, in the August 5, 2009 Filing, to revise their formula for calculating Reference Levels.”). Attempts to amend a tariff outside the scope of the changes submitted in a Section 205 filing may only be made through a separate Section 206 complaint.

⁴⁸ The Commission has long held that “it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined.” *Alamito Co.*, 41 FERC ¶ 61,312, at 61,829 (1987), *order on reh’g*, 43 FERC ¶ 61,274 (1988) (citing *Cent. Kan. Power Co.*, 5 FERC ¶ 61,291, at 61,621 (1978)); *see also Pac. Gas & Elec. Co.*, 121 FERC ¶ 61,065, at PP 42-43 (2007) (explaining that the preclusive effect of collateral estoppel ends when a party presents new evidence, and finding in that case that there was no new evidence or significantly changed circumstances that would warrant relitigation of the decided issue). *See also, Entergy Nuclear Operations, Inc. v. Consolidated Edison of N.Y., Inc.*, 112 FERC ¶ 61,117, at PP 12, 45 (2005) (finding that arguments raised were a collateral attack on prior Commission orders where the same positions were raised, addressed, and rejected by the Commission).

C. Using cost-based reference levels will better align an Aggregation’s reference level with its actual costs and produces a more reasonable proxy value than an LBMP- or Bid-based reference level would.

The June 1 Filing proposed to require cost-based reference levels for Aggregations, precluding them from the ability to use Bid-based or LBMP-based reference levels.⁴⁹ Trade Associations protest the NYISO’s proposal on the grounds that it will result in significant administrative complexity and disputes, and that accurately incorporating opportunity, risk, and other costs specific to individual DER will be challenging and require extensive consultation with NYISO staff.⁵⁰

Reference levels are a proxy for the offer (Bids) an Aggregator would submit for its Aggregation in a competitive market in which the Aggregator could not exercise market power. When the NYISO is testing an Aggregation’s offer for possible conduct and impact mitigation it compares the Aggregation’s reference levels to the offers that the Aggregation submitted.⁵¹ When the NYISO identifies “conduct” (an offer that exceeds the reference level by more than the relevant threshold in Sections 23.3.1.1 through 23.3.1.3 of the Services Tariff) and an “impact” to prices and/or to guarantee payments that exceeds the impact threshold in Section 23.3.2.1 of the Services Tariff, it will “mitigate” the Aggregation by replacing the conduct-failing offer with a reference level, or by assessing a financial sanction. These rules apply to Aggregations and Generators participating in the NYISO’s Energy Market.⁵²

⁴⁹ June 1 Filing at 13-14.

⁵⁰ Trade Associations Protest at 8-9.

⁵¹ Services Tariff Secs. 23.3.1.1 – 23.3.1.3 (conduct), 23.2.1 (impact), and 23.3.1.4 (reference levels).

⁵² As part of their argument, Trade Associations state that “load reduction resources participating as part of a DER aggregation [sic] should not be subject to market power mitigation or reference cost levels” in the same way that SCRs are not subject to the NYISO’s Energy Market Mitigation Measures. The analogy Trade Associations try to draw should be rejected as the conduct and impact test that utilizes reference levels is for *Energy Market* mitigation. SCRs do not participate in the NYISO’s Energy Market and therefore are not subject to the NYISO’s Energy Market Mitigation Measures. Demand Side Resources participating in the NYISO’s Energy market (*e.g.*, DADRP Resources) are not typically required to develop cost-based Incremental Energy reference

The 2019 DER and Aggregation Filing proposed, and the Commission accepted, the use of three different types of reference levels for Aggregations (LBMP-based, Bid-based, and cost-based) to be consistent with the reference level options available for Generators. LBMP- and Bid-based reference levels use LBMPs at a Generator's location during hours when the Generator is operating or a Generator's accepted Bids, respectively, over a 90-day look-back period to develop a reference level. Cost-based reference levels use the Resource's demonstrated or expected costs to develop a reference level.

As the NYISO developed the implementation details for its DER and Aggregation participation model it realized that the flexibility provided to Aggregators on how they design and offer their Aggregations does not align with the intent of LBMP-based and Bid-based reference levels. A traditional Generator's competitive, accepted offers during a look-back period (adjusted for changes in fuel prices) present a reasonable proxy for the same Generator's competitive offers in a future period.

Unlike a traditional (*e.g.*, thermal) Generator, an Aggregation's composition can change monthly⁵³ and the individual DER an Aggregator uses to meet its schedule or dispatch instruction can change by the hour.⁵⁴ For an Aggregation, therefore, the set of DER being offered in a future period may bear little resemblance to the DER that were in the Aggregation 90 days ago, or to the DER that the Aggregation was relying on to respond to the NYISO's dispatch instruction just a few hours ago.

levels and are able to place Bids at or below \$1,000/MWh. If the Demand Side Resource seeks to place Bids at a price greater than \$1,000/MWh, it must work with the NYISO to develop a cost-based reference level before doing so. *See* Services Tariff Sec. 23.7.4.2.

⁵³ *See* Accepted Services Tariff Sec. 4.1.10.3.

⁵⁴ For example, an Aggregation may (primarily) use output from a solar DER to meet the dispatch instruction it receives from the NYISO when the sun is shining, but rely exclusively on an Energy Storage Resource when responding to a dispatch instruction at night.

The NYISO expects the costs identified by Trade Associations including “opportunity, risk, and other costs at the customer site—factors that are changing constantly and that differ by customer, resource, and circumstance”⁵⁵ to be primary drivers for their offers into the NYISO-administered Energy Markets. These changing costs attenuate the connection between an Aggregation’s historic offer and its future offers. Hence a fuel-indexed historical look-back at previously accepted offers (Bids) and LBMPs do not present an adequate proxy for an Aggregation’s expected future costs.

As noted, the NYISO agrees with Trade Associations that an accurate cost-based reference level for an Aggregation may need to take into account opportunity, risk, and incremental site-specific costs. The NYISO’s market rules and reference level system already enable the NYISO to incorporate these types of costs into an Aggregation’s reference level, and to update that reference level on a daily or hourly basis. In other words, the NYISO’s reference level development process already addresses the Trade Associations’ concerns. For example, Services Tariff Section 23.3.1.4.1.3 explains that a cost-based reference level “shall include an assessment of the Generator’s or Aggregation’s incremental operating costs,” of which opportunity costs are an enumerated component. Section 23.3.1.4.1.3 goes on to explain that “[o]ppportunity cost is the cost, in dollars, representing (a) the total net revenue in future time periods that is expected to be foregone by being dispatched by the ISO in the current time period, or (b) the total net cost in future time periods that is expected to be avoided by being dispatched by the ISO in the current time period.” The types of opportunity costs that can be claimed are limited to those that are reasonable (as determined by the NYISO) and that can be calculated.

⁵⁵ Trade Associations Protest at 9.

The June 1 Filing proposed to eliminate the ability for Aggregations to use LBMP- and Bid-based reference levels in order to maintain a close tie between the Aggregation's reference level and its actual operation. Trade Associations are correct that reflecting the opportunity costs of DER participating in an Aggregation may be necessary to accurately reflect the Aggregations costs. The NYISO's market rules and reference level software already accommodate input of those costs (but require them to be justified based on evidence). Trade Associations argue that "Bid-based and LBMP-based references would more appropriately account for such factors," but do not explain why that is the case.⁵⁶

Finally, Trade Associations argue that the use of LBMP- and Bid-based references would ease the expected administrative burden for both Aggregators and NYISO. However, such a decision would be inconsistent with the intended purpose of reference levels—to serve as a reasonable proxy for the offers that an Aggregator would be expected to submit for its Aggregation in a competitive market. For these reasons, the NYISO respectfully requests that the Commission reject Trade Associations' protest, permit the NYISO to require cost-based reference levels for Aggregations, and accept the NYISO's proposed revisions to Services Tariff Sections 23.3.1.4.1.1 and 23.1.4.1.2.

D. The NYISO's proposed flexible effective date for tariff revisions terminating the Demand Side Ancillary Services Program ("DSASP") and Day-Ahead Demand Reduction Program ("DADRP") is reasonable.

The 2019 DER and Aggregation Filing proposed to terminate the NYISO's DSASP and DADRP as part of its comprehensive Aggregation and DER market design.⁵⁷ As the NYISO

⁵⁶ Trade Associations also claim, without specific explanation or support, that Bid-based and LBMP-based references "avoid significant barriers to participation and potential over-mitigation." Trade Associations Protest at 9. The NYISO strongly disagrees with Trade Associations' statement, but without an explanation of how limiting Aggregations to cost-based reference levels will result in barriers to entry and over-mitigation it cannot reasonably respond to those arguments.

⁵⁷ 2019 DER and Aggregation Filing at 33.

explained in that filing, the DER and Aggregation participation model tariff revisions expand the participation options for Demand Side Resources that qualify to participate in the DSASP and DADRP by offering a single model under which those resources can qualify to provide, and be co-optimized for, Energy and Ancillary Services.⁵⁸

The NYISO's DER and Aggregation implementation plan includes the proposed twelve-month transition period to minimize the potential for stranded DSASP and DADRP assets (and MW). After consulting with New York's Transmission Owners, Market Participants participating in the DSASP and DADRP, and stakeholders more generally as part of its shared governance process, the NYISO determined that one year was an appropriate amount of time to allow existing DSASP and DADRP participants to move over to the DER and Aggregation participation model.

Recent communications with New York Transmission Owners and demand response program Market Participants confirm significant progress is being made to establish the telemetry infrastructure requirements necessary for the DSASP/DADRP to DER transition. The NYISO understands that the New York Transmission Owners are either actively working to establish, or have published, the requirements for Aggregator connection to their metering and telemetry systems,⁵⁹ and it is the NYISO's understanding that one of New York's Transmission Owners has already established the required connections with a prospective Aggregator's control room. Despite this progress, the NYISO remains committed to enabling a smooth transition into the DER and Aggregation participation model for existing DSASP and DADRP

⁵⁸ *Id.*

⁵⁹ See, e.g., National Grid, *Telemetry and Cybersecurity Guidance for Eligibility to Apply to the NYISO Wholesale Market under FERC Order 2222*, available at: <https://gridforce.my.site.com/servlet/servlet.FileDownload?file=0156T00000GBaO3> (last viewed Jul. 5, 2023).

participants, and as stated in the June 1 Filing, “may lengthen the transition window if unforeseen circumstances arise that would materially impact the ability of DSASP and/or DADRP Resources to complete the transition process within twelve months.”⁶⁰

Trade Associations’ alternative proposal would increase the administrative burden and costs to the NYISO and does not appear to afford any extra benefit for DSASP and DADRP Resources. Trade Associations proposed that the NYISO establish multiple twelve-month transition periods—one for each Transmission Owner—based on the particular Transmission Owner’s readiness to integrate DER. This proposal would require NYISO staff to administer eight separate Transmission Owner DER and Aggregation integration processes and begin a twelve-month clock on the date upon which the Transmission Owner successfully connects to an Aggregator control room.

The NYISO has not developed any method (automated or otherwise) to track these dates on a case-by-case basis, and doing so would require the NYISO to define the particular milestone that begins the transition window for each Transmission Owner, log and track the dates upon which third parties (*i.e.*, the Transmission Owner and an Aggregator) achieve that milestone, and inform the stakeholder community of the transition period for each Transmission Owner. Market Participants will also need to develop their own processes to track those dates to avoid missing a particular transition window. Notably, under Trade Associations’ proposal, the transition window may have already opened for Market Participants seeking to connect to one Transmission Owner, which would put those Market Participants at a disadvantage vis-à-vis Market Participants connecting to other Transmission Owner systems.

⁶⁰ June 1 Filing at 23.

Moreover, Trade Associations have not established that their proposal would benefit Market Participants—*i.e.*, result in a longer transition timeline and fewer stranded assets than proposed by the NYISO. Under the NYISO proposal, if circumstances dictate that if *any* Transmission Owner requires longer than twelve months, then *all* Transmission Owners will receive the benefit of the longer transition period. This solution does not preference Market Participants connecting to any one Transmission Owner system over another.

The NYISO understands and appreciates the concerns regarding the transition period, has been diligently working with Transmission Owners and Market Participants to facilitate the DSASP/DADRP-to-DER transition, and reaffirms its commitment to mitigate the potential for stranded assets. Trade Associations' proposal is administratively burdensome and without clear benefit for Market Participants. For these reasons, the NYISO respectfully requests that the Commission accept the NYISO's request for a flexible effective date.

III. Conclusion

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and accept the June 1 Filing in this docket without requiring any modifications.

Respectfully Submitted,

/s/ Gregory J. Campbell

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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 7th day of July 2023.

/s/ Elizabeth Rilling

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