

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

New York Power Authority

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Docket No. ER12-1806-000

**MOTION TO INTERVENE WITH SUPPORTING AND EXPLICATORY COMMENTS
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR.**

In accordance with Rules 212, 213 and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. ("NYISO"), respectfully moves to intervene and submits supporting and explicatory comments in the above captioned proceeding, *Request for Limited Tariff Waiver and Request for Expedited Action of the New York Power Authority*. The New York Power Authority ("NYPA") has requested a waiver of certain NYISO tariff provisions and the corresponding NYISO procedures relating to data reporting and verification for Special Case Resources ("SCRs") that participated in the NYISO's SCR program for the Summer 2011 Capability Period ("Summer 2011"). In particular, NYPA seeks relief from the NYISO's tariff and procedural provisions that apply to the reporting of each SCR's Average Coincident Load ("ACL") baseline values found in Section 5.12.11.1.1 of the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") and Section 4.12.4.1 of the NYISO's Installed Capacity ("ICAP") Manual. NYPA's failure to follow these rules and procedures has resulted in a significant derate of the available capacity assigned to these SCRs of approximately 250 MW. NYPA seeks relief for these SCRs in order that they may continue to participate and sell capacity in the NYISO markets going forward in the Summer 2012 and Winter 2012/2013 Capability

¹ 18 C.F.R. §§ 385.212, 385.213 and 385.214 (2011).

Periods at levels consistent with their performance during the Summer 2011 Capability Period. NYPA asserts, and the NYISO agrees, that without such a tariff waiver, inadvertent ICAP market price outcomes will occur that increase the cost of capacity ultimately borne by New York consumers.

I. BACKGROUND

On February 17, 2011, the NYISO filed proposed revisions to Section 5 of the Services Tariff to enhance the rules that allow participation of SCRs in the NYISO's ICAP market.² ("February Filing"). Most relevant to this proceeding, the tariff amendments proposed the ACL³ baseline calculation methodology to replace the average peak monthly demand ("APMD") baseline methodology. This change to the baseline methodology better aligns the participation and performance of demand response with the operational expectations of the NYISO during an SCR event called for reliability purposes by obtaining better estimates of the demand reduction capabilities of SCRs. The ACL methodology requires the baseline load level for each SCR to be calculated as part the SCR's enrollment for each capability period using an average of the top 20 hours of its measured load that are coincident with the top 40 coincident hours of the New York Control Area (NYCA) peak load during the Prior Equivalent Capability Period.

During the development of the ACL tariff provisions, the NYISO communicated to its stakeholders, and also explicitly stated in its February Filing, that it could not fully implement the ACL data reporting and baseline calculation processes into its SCR program for the Summer

² Proposed Tariff Revisions for the Measurement and Performance of Special Case Resources, Aggregations and Responsible Interface Parties at 7, Docket No. ER11-2906-000 (filed February 17, 2011) ("February Filing")

³ Section 2.1 of the Services Tariff defines Average Coincident Load as: "The value in each Capability Period for each Special Case Resource that is equal to the average of the Special Case Resource hourly Load taken from the SCR Load Zone Peak Hours applicable to such Special Case Resource, and computed and reported in accordance with Section 5.12.11.1.1 of this Services Tariff and ISO Procedures."

2011 Capability Period using the Demand Response Information System (DRIS) software.

Stakeholders, however, “strongly expressed their desire to have these provisions implemented for the Summer 2011 Capability Period”⁴ and agreed to interim measures that allowed the new ACL baseline proposal to be implemented for the Summer of 2011 in accordance with a specific *ex post facto* ACL data reporting and verification procedure. This procedure was incorporated into the NYISO ICAP Manual with unanimous approval of the NYISO Business Issues Committee on January 26, 2011.⁵ This specific interim procedure only applied to Summer 2011 ACL data reporting and verification.⁶ All Responsible Interface Parties (“RIPs”) that enrolled SCRs using an ACL during the Summer 2011 Capability Period were required to comply with this *ex post facto* procedure; however, Section 5.12.11.1.1 of the Services Tariff required that all RIPs possess this data prior to enrolling each SCR and use it correctly to calculate the ACL for each SCR. To facilitate RIPs compliance with this tariff requirement the NYISO posted the SCR Load Zone Peak Hours for each zone to its website on February 11, 2011.

On April 11, 2011 the Commission accepted the NYISO ACL baseline rules and directed the NYISO to incorporate the ICAP Manual language regarding the ACL baseline into the Services Tariff.⁷ The April Order acknowledged that the ACL methodology would be implemented for the Summer 2011 without the required DRIS functionality.⁸ Part of this

⁴ February Filing at 7; see also New York Independent System Operator, Inc., 135 FERC ¶ 61,020 at P 13 (2011) (noting that Market Participants filed protests objecting to any proposed delay in the implementation of the tariff revisions and urging the Commission to issue an order accepting the modifications effective on or before April 11, 2011).

⁵ The February filing states that DRIS functionality for the ACL process would be in place by the Winter 2011/2012 Capability Period.

⁶ Going forward the Services Tariff and ISO Procedures require that the ACL data reporting and verification happen at the time the SCR is first enrolled to participate in each Capability Period.

⁷ *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,020 (2011) (“April Order”).

⁸ *Id.*

missing functionality was the NYISO's ability to receive the 50 hours of meter load for each SCR that were used to calculate each SCR's ACL baseline. The NYISO implemented its ACL reporting rules for May 2011, the first month of the Summer 2011 Capability Period and offered several training sessions to instruct RIPS on how to enroll SCRs consistent with the ACL rules. The NYISO had previously made it clear to its stakeholders on numerous occasions that if the Commission accepted these proposed tariff revisions by April 11, 2011 the ACL rules and procedures, including the interim procedures, would be effective for the Summer 2011 Capability Period.⁹ The NYISO also made it clearly known that one such interim procedure would require each RIP to submit the required 50 hours of ACL data to the NYISO after the DRIS functionality was available in September 2011 as part of the ACL reporting and verification process. The NYISO repeatedly reminded the RIPS of this special *ex post facto* procedure throughout the summer and fall of 2011.

The DRIS software changes required to implement the modifications to the SCR program accepted by the Commission in the April Order were put in place in September 2011, in time for the Winter 2011/2012 Capability Period. This functionality allowed the NYISO to receive the 50 hours of ACL data required by Section 5.12.11.1.1 of the Services Tariff and Section 4.12.4.1 of the ICAP Manual. The NYISO held several DRIS training sessions to further instruct RIPS of the requirement, and the means by which to comply with this requirement. During these sessions NYISO staff announced the period, running from October 3, 2011 through November 18, 2011, during which RIPS would be able to upload this required ACL data directly into DRIS.¹⁰

⁹ For all SCRs that had been previously registered with the NYISO, each RIP was required to provide the ACL calculated using the SCR's Load Zone Peak Hours, as described in the Services Tariff. All RIPS were required to have the applicable ACL values for the 50 SCR Load Zone Peak Hours prior to enrolling the SCR for the Summer 2011.

¹⁰ An additional Provisional ACL data verification period opened in February of 2012 as required by Section 5.12.11.1.2. This section sets forth the requirements used to determine a Provisional Average Coincident Load, which is used for a Special Case Resource that has not previously been enrolled with

The ACL period ran without incident. The NYISO Staff was not made aware of any issues associated with this interim ACL data reporting process during this period in the fall of 2011. During the preparations for May 2012 ICAP Spot Auction, which was held in April 2012, SCR performance factors were calculated and posted for RIPS to view in DRIS. At this time, the NYISO first learned that NYPA had failed to submit the ACL data verification during the 45-day reporting period starting on October 3, 2011 and running through November 18, 2011. This reporting period had been noticed in DRIS, in the NYISO ICAP Event Calendar, and during the numerous DRIS training sessions held that fall in advance of and during the reporting period. NYPA also brought this to the NYISO's attention and requested the NYISO accept a late submission of the ACL data. The NYISO staff reviewed the request and determined that Section 5.12.11.1.1 of the Services Tariff and Section 4.12.4.1 of ICAP Manual prohibited such relief. NYISO staff subsequently learned that another single SCR located in the Rest-of-State area with over 100 MW of load reduction capability had also failed to report this ACL verification data resulting in over a 92 MW derate for the Summer 2012 Capability Period. As a result of these omissions, the Services Tariff and ISO Procedures required the ACL baseline values for this SCR and NYPA's 58 SCRs be set at zero. The NYISO confirmed that DRIS had properly attributed zeros for the ACL data and that the performance calculations conducted by DRIS for each of these SCRs resulted in a zero load reduction performance for each hour of a test or event during the Summer 2011. The omission of both RIPS to report the ACL data for these 59 SCRs severely impacted the performance factor of these resources.

NYISO staff has further investigated this ACL data reporting issue first identified for NYPA and discovered in addition to NYPA, a total of nine other RIPS failed to provide this ACL

the ISO and has never had interval metered Load data for each month in the Prior Equivalent Capability Period. This section also describes the data verification requirements for SCRs that participated with a Provisional ACL.

verification data to the NYISO for a total of 193 SCRs. In large part, the NYISO procedures provided the correct incentives to discipline the overwhelming majority of RIPS to report this ACL verification data. Only 10 out of approximately 50 RIPS failed to submit the data which impacted only 193 SCRs out of approximately 6000. Eighty percent of the RIPS representing nearly 97 percent of all SCRs complied with these requirements. Unfortunately, however, three of the 193 SCRs for which data was not submitted total nearly 550 MW of load reduction capability, exceeding one-quarter of the load reduction capability of the entire SCR program. The NYISO estimates that the total capacity derate for just these three SCRs alone exceeds 330 MW. Combined with the remaining 190 SCRs, the total SCR capacity derate corresponding to these SCRs is estimated to be approximately 380 MW.

II. COMMUNICATIONS

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs
*David Allen, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-8540
Fax: (518) 356-4702
rfernandez@nyiso.com
rstalter@nyiso.com
dallen@nyiso.com

* Persons designated for service.

III. MOTION TO INTERVENE

The NYISO is a not-for-profit corporation responsible for providing open-access transmission service, administering open and competitive wholesale markets, and bringing together buyers and sellers of electricity, capacity, and ancillary services, in New York State.

The NYISO is also responsible for the reliable operation of the bulk electricity grid, and both short-term and long-term planning for the bulk power system in New York State. The NYISO manages the flow of power over nearly 11,000 circuit-miles of transmission lines and centrally dispatches over 300 generating units. As part of its capacity markets the NYISO administers the Special Case Resource program for approximately 6,000 SCRs and 50 Responsible Interface Parties. Because NYPA's tariff waiver filing will have a significant effect on the NYISO's administration of its SCR program and its capacity markets for the Summer 2012 and Winter 2012/2013 Capability Periods, no other party can adequately represent the NYISO's direct and substantial interests in this proceeding. Accordingly, it is in the public interest to permit this intervention.

IV. THE NYISO SUPPORTS THE TARIFF WAIVER REQUEST FOR ALL RIPS THAT FAILED TO PROVIDE TIMELY ACL VERIFICATION DATA DURING THE 45 DAY REPORTING PERIOD THAT OPENED ON OCTOBER 3, 2011

The NYISO is disappointed and discouraged by the ten RIPS' failure to comply with the *ex post facto* ACL data requirements, and in particular the two RIPS that had three SCRs totaling over 550 MW of capacity because these RIPS had such a large financial incentive to comply with the NYISO's minimal data reporting requirements. Nevertheless, the NYISO does agree with NYPA that the application of the tariff rule and the corresponding NYISO procedure results in an unintended and unnecessary market distortion. The NYISO concurs with NYPA that the 250 MW derating of their SCR capacity would be expected to impact ICAP clearing prices for the NYISO spot auction by a maximum of approximately \$0.59/kW-Month. The NYISO also submits that NYPA's estimate of the financial impact to consumers caused by their data

omission is a reasonable estimate.¹¹ Combined with the derates for the other SCRs whose RIPs failed to submit this data, the estimated price impact increases to over \$0.89/kW-Month, which could likely result in a 51 percent increase in NYPA's estimated cost impact to loads — and ultimately consumers.

The SCR program rules strictly require that RIPs provide proper and timely baseline and performance data. The penalty for noncompliance is to automatically deem non-reported data to be zero, which affects the performance factors for SCRs and RIPs for two Capability Periods. It is a strict penalty because it is an essential requirement for the NYISO staff to measure and verify load reduction capability of all of its SCRs, as well as the actual load reduction performance of SCRs during an event or test. The NYISO staff also has numerous market administrative responsibilities based upon each SCR's performance factor that must be carried out each month and before each Capability Period. It is important to note that the NYISO relies on RIPs to self-report a very limited amount of data into DRIS for these purposes, but they are required to be received into DRIS within the applicable required time periods so that the NYISO can complete its administrative duties in time for monthly Installed Capacity Auctions. Further, these reporting periods are clearly identified in several places, including in DRIS itself, the NYISO's ICAP Event Calendar, and on the NYISO website. In this case, all RIPs were required to have this data in their possession eight months before the ACL data reporting period was closed. Further, the RIPs were told numerous times of this *ex post facto* requirement during stakeholder meetings and during the several DRIS training sessions NYISO staff held for these new ACL rules. This training included instruction on how to upload this ACL verification data into DRIS.

¹¹ NYPA's total estimated cost impact provided in its filing appears to be based upon the amount of megawatts it assumes are directly exposed to the increased clearing price in the NYISO Monthly and Spot Auctions multiplied by product of the slope of the demand curve and the derated SCR MW.

While the NYISO continues to believe that its data reporting requirements, and the RIPs compliance with such requirements, are necessary and essential components to a successful SCR program, it supports the waiver request filed by NYPA and requests that the Commission make any such relief that it grants NYPA applicable to all ten RIPs that are similarly situated,¹² provided they submit a timely intervention in this proceeding. The NYISO points out that implementing any waiver of these rules will significantly tax its already limited resources. As such the NYISO cannot implement serial waivers or subsequent waivers of these requirements for RIPs that do not seek, nor are granted, such a waiver from the Commission in this proceeding. To this end the NYISO has notified each of these RIPs and requested that they seek to promptly intervene in this proceeding.

V. THE NYISO SUPPORTS NYPA’S REQUEST FOR EXPEDITED ACTION AND NOTES THAT BECAUSE OF TIME CONSTRAINTS THE NYISO CANNOT IMPLEMENT A TARIFF WAIVER FOR THE JULY INSTALLED CAPACITY MARKET AUCTIONS THAT IS GRANTED BY THE COMMISSION AFTER MAY 25, 2012.

The NYISO staff will need approximately two full weeks to implement the waiver requested by NYPA in this proceeding. This work would need to be completed in DRIS at least two days prior to the close of enrollment for the next month in the Capability Period. A

¹² The NYISO notes that it cannot accommodate a reopening of the ACL data reporting and verification period for all RIPs that may seek to correct or otherwise revise ACL data. Nor can the NYISO accommodate a reopening of the Provisional ACL in-period data verification process. Section 5.12.11.1.2 of the Services Tariff and Section 4.12.4.2 of the ICAP Manual provide that: “[a]ny Provisional Average Coincident Load will be subject to actual in-period verification.... Following the Capability Period for which a resource with a Provisional Average Coincident Load was enrolled, the RIP shall provide to the NYISO the data necessary to compute the ACL of the resource from the resource’s interval meter data in accordance with ISO Procedures. The RIP is responsible for uploading into the DRIS the ACL data of the resource for the SCR Load Zone Peak Hours within the Capability Period in which the resource was enrolled with a Provisional ACL from the date of the Meter Installation Date for the resource to the end of the Capability Period.” At this time the NYISO is aware of two RIPs that failed to comply with this tariff requirement. The failure to report Provisional ACL data is distinguishable because the Provisional ACL reporting requirement is expressly designed to be a post-Capability Period reporting process for new SCRs.

Commission Order granting the waiver requested by NYPA on or before May 25, 2012 presents the only possible manner for such a waiver to be implemented for July. If the order were granted on May 25th, the Friday that starts this year's Memorial Day holiday weekend, the NYISO and the affected RIPs¹³ would need to begin work implementing a tariff waiver during the holiday weekend in order to complete the process prior to the close of the SCR enrollment period for July. July enrollment opens on May 23rd and closes on Friday, June 7th. Four calendar days from the issuance of any waiver would be appropriate for the affected RIPs to upload the data into the DRIS. Any ACL data not received by the NYISO in this three-day time period, which will close at five o'clock on the afternoon of the third day, will necessarily remain zero. Once the NYISO has received the ACL verification data, it will need to force DRIS to recalculate SCR performance factors, SCR Aggregation performance factors, RIP performance factors and an overall SCR program performance factor. Making the changes to DRIS that are implicated by these calculations will take at least three days to execute and review the calculations. This would leave one day for the RIPs to enroll these resources properly for July.

As indicated above, the NYISO would need to start this work by May 25th in order to have a good likelihood that the necessary production work would be complete by June 6th, but if the Commission cannot issue an order on or before May 25, 2012, the NYISO will work to allow these resources to fully participate in the August 2012 ICAP Auction. SCR Enrollment for August opens on June 22, 2012 and closes on July 9, 2012.

¹³ This work load significantly increases as the number of RIPs that obtain a waiver increase. Currently the NYISO believes it can implement a tariff waiver of the ACL data verification reporting requirements for the 10 RIPs that failed to follow the interim procedure established for the Summer 2011 Capability Period. On May 17, 2012 the NYISO became aware of another RIP that had correctly uploaded ACL data for over 80 SCRs, but had failed to upload ACL data for two SCRs. The NYISO feels that this RIP is not similarly situated with the ten RIPs discussed above.

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO, respectfully requests that the Commission grant this Motion to Intervene and issue an order granting the requested waiver expeditiously.

Respectfully submitted,

/s/ David Allen

David Allen

Senior Attorney

New York Independent System Operator, Inc.

May 18, 2012

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 18th day of May, 2012.

/s/ Joy A. Zimmerman

Joy A. Zimmerman
New York Independent System Operator, Inc
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-6207