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February 7, 2019

SENT VIA ELECTRONIC FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER19-467-000 - New York Independent
System Operator, Inc.

Dear Secretary Bose:

Attached, for filing in the above-referenced proceeding,
please find the Protest and Interventions of the New York State
Public Service Commission and the New York State Energy Research
and Development Authority. Should you have any questions
regarding the attached, please feel free to contact me at (518)
402-1537.

Very truly yours,

/s/ S. Jay Goodman
S. Jay Goodman, Esq.
Assistant Counsel

Attachment

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

New York Independent System) Docket No. ER19-467-000
Operator, Inc.)

**PROTEST AND INTERVENTIONS OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION AND NEW YORK STATE ENERGY
RESEARCH AND DEVELOPMENT AUTHORITY**

INTRODUCTION

On December 3, 2018, the New York Independent System Operator, Inc. (NYISO) filed proposed amendments to its Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT) (the Tariff Filing) that purport to comply with the Federal Energy Regulatory Commission's (Commission) directives set forth in Order No. 841.¹ In its Tariff Filing, the NYISO proposes market rules for Energy Storage Resources (ESRs) to participate in the NYISO-administered energy, ancillary services, and installed capacity markets.

The New York State Public Service Commission (NYPSC) and the New York State Energy Research and Development Authority

¹ Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators, 162 FERC ¶61,127 (issued February 15, 2018), Errata Notice (issued February 28, 2018). All citations herein to Order No. 841 refer to the revised Order issued on February 28, 2018.

(NYSERDA) (collectively, the NY State Entities) fully support the goal of Order No. 841 to reduce market barriers and develop market rules that enable ESRs to participate in the wholesale markets to the full extent of their technical capability.² The NYISO's proposals, however, do not comply with Order No. 841 because they would create barriers to market entry by ESRs. Moreover, the Tariff Filing exceeds the permissible scope of the required compliance filing directed by the Commission in Order No. 841 by proposing buyer-side mitigation (BSM) measures that would be applied to all capacity resources sized 2 megawatts (MW) and under, regardless of whether those resources are ESRs. The NYISO's proposals also would impede the policy objectives announced in Order No. 841, as well as complementary State policy objectives that New York is pursuing. For these reasons, as described further herein, the Commission should reject the Tariff Filing and direct the NYISO to submit revised tariff amendments that address the deficiencies discussed herein and eliminate, to the extent practicable, barriers to ESR market entry and participation, as required by Order No. 841.

² The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York State Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

NOTICE OF INTERVENTION AND MOTION TO INTERVENE

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§385.211), and the Commission's Notice of Extension of Time, issued on December 14, 2018, the NY State Entities hereby provide their Protest and Interventions. The NYPSC submits its Notice of Intervention, as a matter of right, pursuant to Rule 214(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.214(a)(2)).³

The NYPSC has a statutory requirement under the New York Public Service Law (PSL) to establish a State goal for the deployment of "qualified energy storage systems," and a policy to support that goal, taking into consideration various objectives.⁴ Therefore, the NYPSC has a valid and substantial interest in this proceeding and its unique interests cannot adequately be represented by any other party.

NYSERDA hereby submits its Motion to Intervene in this proceeding pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.214). NYSERDA is a

³ The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State and, therefore, is a State Commission as defined in section 3(15) of the Federal Power Act (FPA) (16 U.S.C. §796(15)).

⁴ NY PSL §74.

public benefit corporation in the State of New York with a mission statement that directs it to "develop and implement new energy technologies consistent with economic, social and environmental objectives."⁵ These efforts are key to developing a less polluting and more reliable and affordable energy system for all New Yorkers. Collectively, NYSERDA's efforts seek to reduce greenhouse gas emissions, accelerate economic growth, reduce customer energy bills, and promote a more reliable and resilient grid. In furtherance of these efforts, NYSERDA participates as a voting member in the NYISO's Governance Committees process, representing the interests of end-use consumers. The resolution of issues raised in this proceeding could have a significant future impact on the State's ability to reliably and efficiently meet public policy objectives and ensure access to energy technologies and services that best serve end-use customer requirements, thereby impacting the cost that end-use consumers in New York pay for electricity. As a result, NYSERDA's interests will be directly affected by this proceeding. NYSERDA cannot be adequately represented by any other party, and NYSERDA's intervention is in the public interest. Therefore, NYSERDA respectfully requests that the Commission grant its timely motion to intervene.

⁵ NY Public Authorities Law §1854.

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BACKGROUND

Federal and State policy objectives regarding the need to enable ESR market participation converged in Order No. 841. The Commission revised its regulations to include the mandate, implemented through Order No. 841, that Regional Transmission Organization and Independent System Operator (RTO/ISO) markets must be designed to accommodate ESR participation to the full extent of their technical capability.⁶ The Commission thus found in Order No. 841 that existing market rules are unjust and unreasonable because they include barriers to the participation

⁶ Order No. 841, P317; 18 C.F.R. §35.38 (g) (9) (ii).

of ESRs in RTO/ISO markets.⁷ The Commission explained that “market rules designed for traditional resources can create barriers to entry for emerging technologies.”⁸ Preventing ESRs from participating in the market to the full extent of their technical capability, the Commission noted, artificially reduces competition and thus fails to ensure just and reasonable rates.⁹

The Commission also explained that such limitations inhibit developer efforts to design their ESRs to maximize the capacity, energy, and ancillary services that they provide.¹⁰ Further, the Commission found that this creates a missed opportunity to improve bulk system resilience by capitalizing on ESRs’ ability to both inject energy into the grid and withdraw energy from it.¹¹

New York shares the goal of promoting full ESR market participation and is acting within its reserved authority under the FPA to open retail opportunities for ESRs.¹² The New York

⁷ Order No. 841, P1, P19-20.

⁸ Id., PP 10, 20.

⁹ Id., P1-2, P19-20.

¹⁰ Id., PP2, 12.

¹¹ Id., PP2, 12.

¹² The FPA reserves to states broad regulatory authority, including the authority to regulate the retail energy market and the supply portfolio.

State (NYS) Energy Plan,¹³ which State agencies are required by law to implement through their energy-related actions and decisions,¹⁴ recognizes that ESRs will serve a critical role in helping to achieve the State's clean energy goals and greenhouse gas (GHG) emissions reductions target. The NYS Energy Plan focuses many of its objectives through the Reforming the Energy Vision (REV) proceeding currently pending before the NYPSC.¹⁵

The need to increase ESR penetration was sharpened by New York Public Service Law §74, which directed the NYPSC to develop an ESR deployment policy. The NYPSC thus adopted a statewide ESR deployment goal of up to 3,000 MW by 2030,¹⁶ with an interim deployment target of 1,500 MW by 2025. These actions demonstrate that New York's energy policy objectives are aligned with those described in Order No. 841.

¹³ The Energy to Lead: 2015 New York State Energy Plan, available at <https://energyplan.ny.gov/Plans/2015> (NYS Energy Plan).

¹⁴ N.Y. Energy Law §3-103 (directing every state agency to "conduct its affairs so as to conform to the" NYS Energy Plan), and §6-104(5)(b) (requiring that all energy-related actions and decisions of a state agency or authority must be "reasonably consistent" with the NYS Energy Plan).

¹⁵ NYS Energy Plan, p. 7; Case 14-M-0101, Reforming the Energy Vision, available at <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/FCFC9542CC5BE76085257FE300543D5E?OpenDocument>.

¹⁶ Case 18-E-0130, Energy Storage Goal and Deployment Policy, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018).

DISCUSSION

The Commission appropriately concluded that updating market rules for "traditional" resources is necessary to accommodate emerging technologies. This effort, however, also must reflect differences in economic opportunities as well as technological capabilities. "Traditional" resources generally were designed to sell transmission-level products and services in the wholesale markets. Emerging technologies such as ESRs, however, may be designed to provide distinct products and services to both the wholesale and retail markets. Market rules should not unnecessarily hinder the ability of ESRs to maximize their economic potential by imposing artificial constraints that limit the services these projects can provide.

The Federal and State initiatives described herein are complementary and their success will depend, in part, on the ability of ESRs to participate in both the retail and the wholesale markets to the full extent of their technical capabilities. This is the only way for many ESR projects to realize their full economic potential, and full market access is necessary to maximize ESR contributions to system reliability. Satisfying the directives of Order No. 841 is critical to enabling ESR participation in the wholesale markets, but the success of this effort also depends on creating a wholesale

market structure that can interact with the retail market by enabling opportunities for dual participation.

The Tariff Filing fails to satisfy the Order No. 841 directives by failing to identify barriers to ESR market entry, and by proposing certain market rules that, if implemented, would create substantial barriers to full ESR participation in the wholesale markets. The proposals also would interfere with legitimate policy objectives for ESR penetration that New York is pursuing.

I. THE COMMISSION SHOULD REJECT THE TARIFF FILING BECAUSE IT FAILS TO ELIMINATE BARRIERS TO MARKET ENTRY IN COMPLIANCE WITH THE ORDER NO. 841 DIRECTIVES

The Commission directed RTOs/ISOs to propose an ESR wholesale market participation model that removes barriers to entry and enables participation to the full extent of ESRs' technical capabilities.¹⁷ The Tariff Filing purports to satisfy these policy directives but fails to do so. The proposed market rules include key proposals that needlessly create barriers to ESR participation in the NYISO-administered markets. Moreover, the Tariff Filing proposes an unrelated, market-wide change in the application of BSM measures that exceeds the scope of compliance required by Order No. 841, as discussed further

¹⁷ Order No. 841, PP19-20.

below. Thus, the Tariff Filing both contravenes the directives in Order No. 841 and interferes with legitimate State policy objectives.

Initially, the effort to eliminate (or moderate) market barriers as required by Order No. 841 necessarily requires an effort to identify the barriers for ESRs that are present in existing market rules. The NYISO, however, acknowledged at Installed Capacity (ICAP) Working Group meetings that it made no such effort. The NYISO's failure to engage in this basic exercise means that the NYISO cannot verify whether its proposed Tariff amendments, if implemented, would eliminate the barriers to ESR market entry, as required by Order No. 841. This glaring omission is a fatal flaw that, standing alone, dictates a finding that the Tariff Filing does not comply with Order No. 841.

The NYISO also failed to comply with the Order No. 841 directive to eliminate market barriers by proposing a participation model that would create multiple barriers to market entry. Such barriers include, at a minimum, the NYISO's proposals to:¹⁸

¹⁸ These issues are addressed substantively below and noted here only to illustrate the market barriers created by the Tariff Filing.

- (1) subject all ESRs to potential mitigation, which will discourage market entry and is not supported by any evidence that these resources have the intent and ability to exercise market power or artificially suppress capacity prices;
- (2) require that ESRs be fully dispatchable (i.e., always available) to enter the market under the proposed participation model, which will discourage entry by imposing a performance requirement that is discriminatory and inappropriate for the technologies represented by ESRs;
- (3) calculate an ESR's unforced capacity (UCAP) with a methodology that penalizes (i.e., derates) the resource if it does not bid in the Real-Time market, thereby artificially diminishing ESR revenues and inhibiting market entry and participation;
- (4) refuse to adopt market rules that permit resource aggregation, which will impede entry by many smaller resources that otherwise could enter the market in the near-term;
- (5) refuse to adopt market rules that permit dual participation in the wholesale and retail markets, and include certain rules that would make dual participation difficult and unduly punitive, with the effect of inhibiting market entry

and participation by artificially diminishing project revenues; and,

- (6) impose over-broad telemetry requirements that are prohibitively expensive and unnecessary on a generally-applicable basis.

Individually and collectively, these barriers will inhibit ESR entry into, and full participation in, the NYISO-administered markets. For resources that do enter the market, these barriers will prevent ESRs from participating to the full extent of their technical capability. These elements of the Tariff Filing thus fail to satisfy the NYISO's obligation under Order No. 841 to design market rules that eliminate market barriers and enable ESRs to participate in the NYISO-administered markets to the full extent of their technical capability.

Consequently, the Commission should reject the Tariff Filing and direct the NYISO to submit a revised set of market rules that remedy these deficiencies. The revised compliance filing should be submitted at the earliest practicable date that enables implementation when required by Order No. 841.

II. THE NYISO'S PROPOSAL TO MITIGATE ESRs SHOULD BE REJECTED

The Tariff Filing contravenes Order No. 841 and interferes with legitimate State policy objectives because it

proposes not only to apply the current BSM rules to ESRs larger than 2 MW, but it also proposes to eliminate an existing mitigation exemption for resources 2 MW and smaller of any technology, regardless of whether they include energy storage capability.¹⁹ These proposals should be rejected as unjust, unreasonable, and unduly discriminatory for three reasons.

First, subjecting ESRs to potential mitigation creates a significant economic and logistical barrier to ESR market entry and participation while interfering with legitimate state policy objectives. Second, subjecting smaller ESRs (e.g., 20 MW or less) to potential mitigation ignores that these resources lack the incentive and ability to exercise market power. Third, the NYISO's proposal to eliminate an existing mitigation exemption for all resources that are 2 MW or smaller, regardless of technology, exceeds the scope of Commission directives specified in Order No. 841 and is not needed to implement the ESR participation model. This proposal also inappropriately interferes with the State policy objective of promoting distributed energy resource market development for the deployment of smaller resources on distribution networks. Although located on distribution networks, many of these resources also could provide transmission-level services, if not

¹⁹ Tariff Filing at 31.

barred from entry by potential mitigation. The proposal, therefore, is procedurally and substantively defective and should be rejected.

A. The Proposal To Subject All ESRs To Mitigation Should Be Rejected Because It Is Inappropriate and Overly-Broad

The NYISO proposes to subject all ESRs to examination and potential mitigation under the BSM rules. The NYISO, however, does not explain why such treatment is necessary, or why it is justified in light of Order No. 841 objectives, recent Commission precedent, and the fact that it would impede legitimate State policy objectives.

The Commission recently exempted Special Case Resources (SCRs) participating in NYISO-administered demand response programs from evaluation and potential mitigation under the BSM rules.²⁰ In the SCR Order, the Commission granted a complaint (the SCR Complaint) which explained that the Services Tariff is unjust and unreasonable because subjecting SCRs to the BSM rules limits the participation of demand response resources in the wholesale capacity market.²¹ The SCR Complaint also

²⁰ New York State Public Service Commission et al. v. New York Independent System Operator, Inc., 158 FERC ¶61,137 (issued February 3, 2017) (SCR Order).

²¹ SCR Order, Pl.

demonstrated that the BSM rules presented a barrier to entry and compelled SCRs to choose between the wholesale- and retail-level demand response programs.²² As a result, the NYPSC could be forced to choose between increasing retail program payments to compete with the wholesale program for participants, or overseeing retail-level programs with anemic participation levels that are incapable of maximizing the potential benefits of demand response.²³ As further explained in the SCR Complaint, mitigation would discourage the efficient use of demand response resources by impeding their ability to participate in both wholesale- and retail-level programs, which serve different purposes. For these reasons, the SCR Complaint argued that subjecting SCRs to mitigation in the ICAP market is unjust and unreasonable, interferes with legitimate State policy objectives, and is inconsistent with the announced Commission policy of eliminating barriers to demand response participation in the wholesale market.²⁴

The Commission agreed that subjecting SCRs to the BSM rules is unjust, unreasonable, and unduly discriminatory and directed the NYISO to exempt SCRs from potential mitigation. In so ruling, the Commission found that SCRs have "limited or no

²² SCR Order, P4.

²³ Id., P5.

²⁴ Id., P7.

incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.”²⁵ The Commission explained that this determination “is consistent with the Commission’s minimum offer price rule policy; specifically, that buyer-side market power mitigation rules are intended to address “market power exhibited by certain entities seeking to lower capacity market prices.”²⁶ The Commission found that SCRs have limited or no incentive to exercise buyer-side market power to artificially suppress ICAP market prices because they are generally individual or small aggregated sets of resources that do not have the same ability to suppress ICAP market prices as a single, large market participant.²⁷ The Commission also found that payments received from dual participation in retail-level demand response programs do not give these resources the incentive or ability to exercise buyer-side market power, and SCRs are not effective tools of price suppression.²⁸ Wholesale- and retail-level demand response programs, the Commission explained, “complement each other, ...serve different purposes,

²⁵ SCR Order, P13.

²⁶ Id., P30.

²⁷ Id., PP31-32.

²⁸ Id., P31.

provide different benefits, and compensate distinctly different services.”²⁹

Significantly, the Commission reconciled its approval of a blanket exemption from mitigation with the basis for applying the BSM rules to other resources:

We believe that a blanket exemption from NYISO’s buyer-side market power mitigation rules for SCRs ... allows appropriate flexibility for, and avoids the creation of unnecessary barriers to, the participation of demand response in the wholesale markets. Specifically, the Commission’s concern regarding buyer-side market power stems from scenarios in which ‘buyers or their agents can exercise market power to reduce capacity market prices below competitive levels by paying out-of-market subsidies to support new capacity, and then offer that capacity into the organized capacity market at prices below costs to drive down the market price.’ With that concern in mind, the Commission seeks to ensure that buyer-side market power mitigation rules strike a careful balance between over-mitigating and under-mitigating new capacity resources. As outlined above, we find that NYISO’s existing buyer-side market power mitigation rules over-mitigate SCRs that have limited or no incentive and ability to artificially suppress ICAP market prices. Therefore, NYISO’s existing buyer-side mitigation rules impose an unnecessary barrier to the participation of demand response in NYISO’s wholesale markets, contrary to Commission policy.³⁰

²⁹ SCR Order, P33.

³⁰ Id., P34 (citations omitted).

The participation of ESRs in the wholesale market presents very similar circumstances to those underlying the findings in the SCR Order. The rationale behind the Commission's decision to grant SCRs a blanket exemption from the BSM rules applies with equal force to ESRs.

1. Subjecting ESRs To Potential Mitigation Interferes With Legitimate State Policy Objectives

New York is encouraging ESR deployment to further multiple legitimate energy policy objectives. These objectives are codified in PSL §74, which directs the NYPSC to develop an energy storage deployment policy that takes into consideration, among other matters: 1) reducing emissions of GHGs; 2) minimization of peak load in constrained areas; 3) cost-effectiveness; and 4) avoided or deferred costs associated with transmission, distribution, and/or generation capacity. In addition, NYS Energy Law §3-103 and §6-104 obligate the NY State Entities to promote ESR policy objectives included in the State Energy Plan.

These policy objectives form the basis for the NYPSC's REV Initiative as well as its recent decision to establish an energy storage goal for 2030 and a deployment policy to meet

that goal.³¹ In establishing the deployment policy, the NYPSC concluded that retail market rules should be designed to ensure that ESRs can participate in the retail market to the full extent of their technical capability, and that retail market rules should be designed to accommodate dual participation in the wholesale market.³² The NY State Entities have advocated for complementary wholesale market rules that enable resources to participate fully in NYISO-administered markets without inhibiting their dual participation in retail markets.

The NYISO, however, proposed a participation model that would interfere with State policy objectives by subjecting ESRs to potential mitigation, failing to include rules for dual participation, and proposing rules (described below) that will make it much harder for ESRs to participate in both markets. These rules are unnecessary and would force ESRs to choose between participating in either the wholesale or the retail market. They also could make it more difficult to accommodate dual participation market rules in the future. The Commission has recognized that harmonizing Federal and State policy objectives under the FPA's cooperative federalism rubric can

³¹ See NY Energy Plan, Storage Order; see generally Case 14-M-0101, Reforming the Energy Vision, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0101&submit=Search>.

³² Storage Order, pp. 100-01.

provide a sufficient basis to exempt resources from the BSM rules.³³ The NYISO's Tariff Filing fails to adequately accommodate legitimate State policy objectives because it would subject to potential mitigation the resources that are necessary to further those objectives.³⁴

2. Subjecting ESRs To Potential Mitigation Is Inappropriate Because ESRs Generally Lack The Incentive And Ability To Exercise Market Power To Artificially Suppress Capacity Prices

The Commission also has found that resources lacking the incentive and ability to exercise market power to artificially suppress ICAP prices may participate in the wholesale markets without the threat of mitigation and without interfering with competitive price formation.³⁵ This finding also should apply to ESRs. Many ESRs entering the market are expected to be small (i.e., 20 MW or less) and will not have the ability or incentive to artificially suppress ICAP market prices. These resources do not present a risk of anti-competitive behavior that warrants expansion of the BSM rules as

³³ See, e.g., SCR Order; and New York Public Service Commission et al. v. NYISO, 153 FERC ¶61,022 (issued October 9, 2015), P105 (stating that an exemption may be sought for SCRs if mitigation would interfere with a legitimate state objective) (RE Exemption Order).

³⁴ The Tariff Filing also fails to accommodate State policy objectives by excluding rules enabling dual participation while including rules that will make dual participation difficult to accommodate in the future.

³⁵ See, e.g., SCR Order, PP30-34; RE Exemption Order, P49.

proposed by the NYISO. Further, individual resources that rely on capacity revenues are unlikely to benefit from acting to suppress capacity prices.

The NYISO's proposed requirement that storage resources may receive capacity payments only if they agree to be managed by the NYISO reinforces the point that ESRs will lack the incentive and ability to exercise market power. As proposed by the NYISO, ESRs will not be able to self-control their assets and be paid for capacity.

ESRs are not effective tools to artificially suppress ICAP market prices because it likely will be difficult, if not impossible, to know with certainty that the action of any individual storage resource will suppress ICAP market prices. Volatility in the amount of unsold capacity in the mitigated capacity zones' ICAP markets makes it impossible to assume that an individual ESR will have a material impact on the market clearing price. The Commission has recognized this point, explaining that "the reasons for changes in capacity prices are complex and multi-faceted" and, therefore, "changes in prices cannot be attributed to one cause..."³⁶

³⁶ Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc., 150 FERC ¶61,214 (issued March 19, 2015), P67.

This point is illustrated in the NYISO's ICAP Market Reports. In 2018, the average amount of unsold and unoffered capacity in New York City exceeded 80 MW per month.³⁷ This amount equates to a potential price impact of approximately \$1.15/kW-month. There are also monthly changes in the amount of SCR supply that are unknown until they occur, and it has been routine for resources located in New York City to mothball when prices decline. These factors demonstrate why the notion of "price suppression" is misplaced when applied to ESRs, especially in markets such as the Mitigated Capacity Zones that have steep Demand Curves.³⁸ These data indicate that it is impossible to predict with certainty what impact, if any, small ESRs might have on the market clearing price. This uncertainty makes ESRs an ineffective tool for price suppression because it would not be rational or profitable to pursue ICAP price suppression through a resource that cannot be relied on to suppress ICAP prices.

The unlikely risk that ESRs may be used to suppress ICAP prices is belied further by developing market rules

³⁷ ICAP Market Report - November 2018, [available at https://www.nyiso.com/installed-capacity-market](https://www.nyiso.com/installed-capacity-market). These values also show volatility on a month-to-month basis.

³⁸ The steep slope of the Demand Curves leads to price changes that elicit a relatively rapid market response, thereby eliminating or moderating the price increase.

proposed by the NYISO. Specifically, the NYISO is developing a proposal to increase the minimum run-time that ICAP resources must satisfy to receive a full capacity payment.³⁹ This may cause many ESRs to be paid a fraction of the ICAP price for their supply. It would not be rational to select a resource with partial capacity value to artificially suppress capacity prices.

3. Subjecting ESRs To Mitigation Would Delay The Class Year Process While Presenting Extreme Administrative Burdens

The proposal to impose BSM rules on small resources raises additional concerns related to the NYISO Class Year Process. Mitigation determinations currently are tied to the Class Year Process. This subjects large resources to a series of studies to determine if system upgrades are needed to facilitate their entry before they may receive Energy Resource Interconnection Service (ERIS) or Capacity Resource Interconnection Service (CRIS) rights. This typically requires multiple, iterative studies that cause the Class Year Process to extend over a significant period of time. For instance, the 2017 Class Year began on March 1, 2017 and is expected to

³⁹ See, e.g., meeting materials for the January 8, 2019 ICAP Working Group meeting, available at <https://www.nyiso.com/icapwg?meetingDate=2019-01-08>.

continue until at least May 2019 - more than two years after it began.⁴⁰

Applying the BSM rules to potentially hundreds of small-sized ESRs would entangle those resources in the Class Year Process. ESRs would be unable to receive their mitigation determinations and enter the market until after iterative system impact studies are completed for new transmission lines and large generators (e.g., 500 MW) through a process that takes years to complete despite NYISO efforts to improve the process. The NY State Entities have been informed by ESR developers that BSM rules and the Class Year Process are two of the most significant barriers to market entry.

Subjecting a large number of small ESRs to an unnecessary mitigation test would compound delays in the Class Year Process and saddle the NYISO with an overwhelming administrative burden. The mitigation test requires the NYISO to: (i) evaluate the various project costs and the estimated revenues of all individual resources with varying sizes and durations to develop individual Unit Net Cost of New Entry values for each resource; and (ii) build a supply stack of new

⁴⁰ NYISO Consumer Interest Liaison Weekly Summary, January 7 - January 11, 2019, p. 4, available at [https://www.nyiso.com/documents/20142/4547434/End Use Summary.pdf/23de8f0d-21e7-78b5-33ab-619fcb27c911](https://www.nyiso.com/documents/20142/4547434/End+Use+Summary.pdf/23de8f0d-21e7-78b5-33ab-619fcb27c911).

prospective resources to determine which resource might be more "economic" under the NYISO's various assumptions, which assumptions may differ significantly from those used by the developer to evaluate the economics of its project. As the market for distributed energy resources, including ESRs, develops, and the penetration of resource aggregations increases, the task of evaluating revenue streams and values attained from all sources for all of these small-scale resources would be difficult, if not unworkable.

4. Alternatively, If The Commission Declines To Exempt ESRs From Potential Mitigation, It Should Instead Grant A Limited Exemption

For the foregoing reasons, the Commission should find that the NYISO's proposal to subject ESRs to the BSM rules is unjust and unreasonable because these resources lack the incentive and ability to artificially suppress ICAP prices, are not effective tools of price suppression, and their full participation in the NYISO-administered markets is necessary to further legitimate State policy objectives. However, if, notwithstanding the foregoing discussion, the Commission authorizes the NYISO to subject ESRs to review under the BSM rules, the Commission should approve a limited exemption for some resources.

To this end, the Commission could exempt from potential mitigation ESRs smaller than 20 MW. These resources

lack the incentive and ability to artificially suppress ICAP prices, and their deployment is necessary to further legitimate state policy objectives. The Commission alternatively could follow its precedent in the RE Exemption Order and exempt ESRs entering the market up to an annual megawatt cap.⁴¹ Allowing, for instance, 300 MW of ESR resources to enter the market each year without examination under the BSM rules would ensure that New York can pursue part of its legitimate State policy objectives without undue interference from wholesale market rules.⁴²

B. The Proposal To Reinstate Previously-Deleted Tariff Language Exceeds The Scope Of Order No. 841, Violates Commission Precedent, And Is Not Needed To Implement The Proposed ESR Participation Model

The NYISO explains that it filed proposed tariff amendments on March 17, 2016, to establish rules for Behind-the-Meter Net Generation Resources (BTMNGs) to participate in the

⁴¹ RE Exemption Order, P51.

⁴² An annual cap of 300 MW would provide New York with a linear path to achieve its storage deployment goal over the 10-year period from 2020-2030.

wholesale markets (the BTMNG Filing).⁴³ The Commission found the tariff amendments to be just and reasonable and approved them.⁴⁴

The NYISO now claims that one tariff amendment approved in the 2016 BTMNG Order should be undone and reversed through the Tariff Filing even though it is not related to Order No. 841. Specifically, the NYISO explains that "Examined Facilities" are resources subject to evaluation and potential mitigation under the BSM rules. The Services Tariff included three categories of Examined Facilities prior to the BTMNG Filing. The NYISO states that Category III facilities included new capacity resources of 2 MW or less that were not subject to a deliverability requirement and, therefore, did not participate in the Class Year process that examines deliverability and system upgrade cost allocations. In the BTMNG Filing, the NYISO concluded that the Category III definition was outdated and unnecessary and, therefore, should be deleted. The Commission approved this change to the Services Tariff.⁴⁵

In its Tariff Filing, the NYISO explains that deleting the Category III definition created a BSM exemption for resources 2 MW or less by removing them from the Examined

⁴³ New York Independent System Operator, Inc., Docket No. ER16-1213-000 (dated March 17, 2016).

⁴⁴ New York Independent System Operator, Inc., 155 FERC ¶61,166 (issued May 17, 2016) (BTMNG Order).

⁴⁵ Id.

Facilities definition. The NYISO claims that, sometime after the BTMNG Order was issued, it concluded that the exemption should be reinstated. According to the NYISO, eliminating the Category III classification created ambiguity as to whether capacity resources that are 2 MW or less and located in Mitigated Capacity Zones will be subject to the BSM rules.

The NYISO previously tried to reinstate the Category III classification by attaching it to unrelated rules governing the creation and elimination of capacity zones.⁴⁶ That initiative failed to gain adequate stakeholder support to warrant an FPA Section 205 filing with the Commission.

The NYISO now inappropriately proposes in its Tariff Filing to "reinstate" the Category III definition as part of its "compliance filing" with Order No. 841. The NYISO argues that this proposal appropriately is included in the Tariff Filing because the Commission has authorized it "to include limited, but necessary, additional revisions that were not explicitly directed in compliance filings..."⁴⁷ The NYISO contends that the Commission previously found the Category III definition to be just, reasonable, and not unduly discriminatory and thus should simply "reinstate" the provision.

⁴⁶ Tariff Filing, p. 52, n.153.

⁴⁷ Id., p. 51, n.146.

The Commission's regulations and precedent are clear. Filings submitted to comply with Commission orders "must include only those changes required to comply with the order."⁴⁸ Compliance filings "may not be combined with other rate or tariff changes, and compliance filings that include other changes or that do not comply with the applicable order in every respect may be rejected."⁴⁹ The purpose of a compliance filing is limited, and the Commission's review of a compliance filing is limited to whether the filing complies with its directives.⁵⁰ The Commission "will reject [and has rejected] a compliance filing that goes beyond the scope of the directives in the Commission's order."⁵¹

The NYISO's proposal to "reinstate" the Category III definition exceeds the scope of the Order No. 841 directives.⁵² The Commission ruled in Order No. 841 that wholesale market

⁴⁸ El Paso Natural Gas Company, 115 FERC ¶61,280 (issued May 31, 2006), P4 (citing 18 C.F.R. §154.203(b)).

⁴⁹ Id. See also New York Independent System Operator, Inc., 155 FERC ¶61,076 (issued April 21, 2016), P4; Transcontinental Gas Pipe Line Corporation, 101 FERC ¶61,154 (issued November 4, 2002), PP13-16; NorthWestern Corporation, 113 FERC ¶61,215 (issued November 29, 2005), PP9-10.

⁵⁰ El Paso Natural Gas Company, 115 FERC ¶61,280 (issued May 31, 2006), P5.

⁵¹ Id.

⁵² In fact, the NYISO's proposal would do the exact opposite of what is required under Order No. 841 by needlessly limiting ESRs' full ability to participate in the capacity market.

rules must be revised as needed to enable full participation by ESRs and thus directed RTOs/ISOs to develop market participation models for ESRs. The NYISO's proposal to "reinstate" the Category III definition exceeds the scope of these directives because it would effectuate a market-wide rule change applicable to any resource that is 2 MW or less, whether or not the resource includes storage capability. Order No. 841 directed the NYISO to file proposed rule changes that are necessary to remove barriers to ESR market entry, rather than erecting new barriers to entry applicable to ESRs and any type of resource sized 2 MW and under.⁵³

The NYISO implicitly acknowledges that its proposal exceeds the scope of Order No. 841 by citing to an entirely different Commission order where it was allowed "to include limited, but necessary, additional revisions that were not explicitly directed in compliance filings..."⁵⁴ Restoring the Category III definition, however, is not a "limited, but necessary" revision to implement the proposed ESR participation model because implementation does not require a sweeping, market-wide revision to the BSM rules. The NYISO does not claim that the existing market rules are unjust and unreasonable with

⁵³ As discussed herein, subjecting ESRs to the BSM rules would create a potent barrier to market entry and participation.

⁵⁴ Tariff Filing, p. 51, n.146.

the current BSM exemption for resources 2 MW or less, nor does it claim that these resources have the incentive and ability to artificially suppress ICAP market prices that might warrant mitigation. The Commission found in the BTMNG Order that eliminating this definition would produce market rules that are just, reasonable, and not unduly discriminatory, and the NYISO presents no argument to rebut this finding.

The NYISO contends that the Category III classification may be reinstated because the Commission previously approved it. Adopting the NYISO's proposal on this basis would be the textbook example of a decision that is arbitrary and capricious because the NYISO has not provided any rationale or justification to find that the proposed tariff amendment would be just and reasonable if implemented at this time. The Commission's earlier approval of the Category III definition is irrelevant to this determination because its judgment of tariff language evolves over time.

This fact is demonstrated by recent Commission precedent regarding the potential mitigation of SCRs, self-supply resources, and certain renewable energy resources in the NYISO-administered markets. In each case, the Commission reversed earlier decisions that rules subjecting these resources to mitigation are just and reasonable. The NYISO's proposal is inconsistent with this precedent. For instance, the Commission

explained in the SCR Complaint Order that the BSM rules are intended to address capacity buyers or their agents that can leverage their capacity resources to "drive down the market price" of capacity.⁵⁵ According to the Commission, applying the BSM rules to small resources that "have limited or no incentive and ability to artificially suppress ICAP market prices" presents an "unnecessary barrier" to participation in the NYISO-administered markets and results in the over-mitigation of new capacity resources.⁵⁶

This rationale reversed a previous Commission determination of what constitutes just and reasonable tariff rules, and it applies with equal force here. The NYISO has not made any effort to demonstrate that the Category III classification should be "reinstated" because ESRs with a capacity of 2 MW or less have the incentive and ability to artificially suppress ICAP market prices. The Tariff Filing, therefore, fails to provide any basis for the Commission to conclude that new capacity resources 2 MW or less - including, but not limited to, ESRs - should be subject to the BSM rules.

⁵⁵ SCR Complaint Order, P34.

⁵⁶ Id., P34.

For the foregoing reasons, the Commission should reject the NYISO's proposal to "reinstate" the Category III definition.⁵⁷

III. THE COMMISSION SHOULD DIRECT THE NYISO TO ADDRESS AN UNNECESSARY BARRIER TO MARKET ENTRY BY PROPOSING MARKET RULES ALLOWING ESRs TO PARTICIPATE IN BOTH THE WHOLESALE AND RETAIL MARKETS AS INDIVIDUAL OR AGGREGATED RESOURCES

The Tariff Filing is deficient and should be rejected because it does not include rules that accommodate ESR aggregation and/or dual participation in both the wholesale and retail markets. The NYISO argues that Order No. 841 did not require it to file proposed market rules for dual participation and, therefore, it will develop and implement those rules at a

⁵⁷ Importantly, the market rules appropriate for implementation in the single-state NYISO control area may differ from those implemented in other control areas. (See, e.g., RE Exemption Order, P78 (noting that the Commission "has recognized that market design and rules need not be identical among the regions and may instead reflect the unique characteristics of the markets as necessary," and what may be appropriate for one control area "is not necessarily appropriate for NYISO") (citation omitted)). Harmonizing Federal and State policy objectives within a single-state control area does not present the same issues as a multi-state control area where the interstate impacts of individual state policies may be taken into account.

later date, potentially in tandem with other limitations on ESR participation.⁵⁸

The Commission required that RTOs/ISOs address barriers that prevent ESRs from providing all of the services they are technically capable of providing. Many ESRs are capable of providing distinct transmission-level (wholesale) and distribution-level (retail) services, and their economic viability may depend on being able to fully capitalize on this capability. This key distinction from "traditional" generation resources is not reflected adequately in the Tariff Filing. In fact, in failing to include dual participation market rules in the Tariff Filing, an ESR is forced to choose between wholesale and retail services, thereby failing to provide maximum benefit to ratepayers. The Commission did not prohibit RTOs/ISOs from proposing dual participation market rules in their compliance filings and such rules should have been included in the Tariff Filing to avoid creating a barrier to market participation.

The policy directives set forth in Order No. 841 are premised on the fact that "market rules designed for traditional

⁵⁸ Tariff Filing, pp. 12, 55. The NYISO has indicated during stakeholder discussions that it might propose to increase "generally applicable minimum run-time obligations." (Id.) This is one of several potential ESR participation model changes the NYISO is discussing with stakeholders that could severely impair the business case for ESR development.

resources can create barriers to entry for emerging technologies.”⁵⁹ The failure to accommodate dual participation perpetuates the “traditional” market structure and creates a significant barrier to ESR entry. The NYISO’s proposals would force ESRs to choose between participating in either the wholesale or the retail market. ESR developers are likely to choose the more lucrative market. If the retail market is more lucrative, the policy objectives announced in Order No. 841 could be frustrated by market rules that fail to enable full ESR participation. If the wholesale market presents the more lucrative opportunity, the NY State Entities would have to decide whether to: (i) increase retail payments to lure ESRs from the NYISO-administered markets; or (ii) oversee a retail storage deployment program that struggles to enroll ESRs and is incapable of maximizing potential ESR benefits. The former option would unnecessarily increase customer costs without a commensurate increase in ESR deployment or customer benefit, while the latter option would hamstring the efficacy of State storage deployment programs. In either event, ESRs would not be allowed to maximize their potential economic value and versatile operating capabilities because they would not be compensated for all services they are technically capable of providing.

⁵⁹ Order No. 841, P10.

ESRs can provide distinct services to both the wholesale and retail systems. The Commission has recognized that capacity resources can participate in both markets, provide distinct services in each market, and be compensated by each market separately for services provided in that market without harming competitive outcomes in the NYISO-administered markets.⁶⁰ Market rules that needlessly prevent or inhibit dual participation by ESRs capable of providing services to both markets are unjust and unreasonable because they fail to account for the operational capabilities and financial needs of these resources, and they are unjustly discriminatory because existing capacity market rules only account for the operational capabilities and financial needs of "traditional" capacity resources.

The Tariff Filing thus fails to comply with Order No. 841 directives because the rules it proposes (i) are premised on a market design framework for "traditional" capacity resources that are incapable of providing distinct services to the wholesale and retail markets, and (ii) will not enable ESR market participation to the full extent of their technical capability. The ESR participation model should be modified to

⁶⁰ SCR Complaint Order, PP31, 33.

account for the ability of many ESRs to provide distinct wholesale and retail services.

It is feasible to include dual participation in the ESR market design at this time. The issue is not new, and it has been discussed by the NYISO and stakeholders for years. Dual participation was raised as an issue in the development of the BTMNG participation model in 2015-2016. At the time, the NYISO agreed to work on the issue as a subsequent phase of the BTMNG participation model. Subsequently, there was extensive discussion on dual participation issues at the Commission's Technical Conference on Distributed Energy Resources in early 2018.⁶¹ In their post-Technical Conference comments on dual participation, the New York Transmission Owners stated that they "have been working with the NYISO to develop operating procedures, including notification timelines and bidding parameters, to allow for such multi-program participation."⁶² These conversations and concepts have been advanced in meetings between the NYISO, New York Transmission Owners, and Department of Public Service Staff over the last year.

⁶¹ Docket No. RM18-9-000, Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators, Transcripts of April 10-11, 2018 DER Technical Conference.

⁶² Docket No. RM18-9, supra, Post-Technical Conference Comments of The Indicated New York Transmission Owners, pp. 8-9.

The Commission has recognized that wholesale markets can remain competitive when they include resources that participate in both the wholesale and retail markets. For instance, the Commission stated in the SCR Complaint Order that distributed energy resources can receive both wholesale and retail payments for distinct services provided to each market without adverse effects on price formation in the NYISO-administered markets.⁶³ The Commission recognized in Order No. 841 that metering and accounting challenges potentially associated with dual participation are surmountable and should not stand in the way of ESRs participating in both markets.⁶⁴ There is no compelling need to delay the implementation of rules that facilitate dual participation and, given the importance of dual participation to ESR viability in the wholesale markets, it is imperative that dual participation market rules be included in the ESR participation model.

The Tariff Filing also fails to comply with Order No. 841 because it does not include rules that enable ESRs aggregated across multiple sites to meet the proposed ESR qualification requirements.⁶⁵ The ability to aggregate resources across sites provides important flexibility for small-scale

⁶³ SCR Complaint Order, P33.

⁶⁴ Order No. 841, P325.

⁶⁵ Tariff Filing, pp. 11-12.

deployments at many locations. An ESR participation model that accommodates aggregations of dispersed storage resources would improve the economics of small-scale projects and further the Federal and State policy objective to increase the amount of ESRs deployed. Accordingly, a revised ESR participation model that enables dual participation and resource aggregation is needed to harmonize Federal and State policy.

The Commission should direct the NYISO to include rules enabling dual participation and aggregation in a compliance filing submitted at the earliest practicable date that would enable implementation when required by Order No. 841. The NYISO should also be directed to avoid proposing rules, such as basing capacity value on continuous real-time availability (discussed below), that unnecessarily burden ESRs and limit or eliminate their opportunity to participate in retail programs. These are potentially the two largest issues that will affect participation and there is an imminent need to include these elements in the participation model.

IV. THE COMMISSION SHOULD REJECT THE PROPOSED MARKET RULES THAT WOULD CREATE A BARRIER TO ESR PARTICIPATION IN THE NYISO-ADMINISTERED MARKETS

The NYISO's failure to identify the potential market barriers to ESR participation is reflected in multiple proposals that, if implemented, would create barriers to market entry and

participation. As discussed above, the NYISO's proposals to apply the BSM rules to ESRs and to prohibit dual participation and aggregations would create significant market barriers that are inconsistent with the Order No. 841 directives and should be rejected. The NYISO also proposes market rules regarding UCAP derating methodology, dispatchability, and telemetry requirements that would create barriers to entry and participation, and are unjust, unreasonable, and unduly discriminatory.

The NYISO proposes a methodology to calculate an ESR's UCAP that is incomplete, unclear, and would create a market barrier that is inconsistent with Order No. 841 directives. The proposal is incomplete because the Tariff Filing describes only a placeholder that will be used until a permanent solution is developed.⁶⁶ The UCAP calculation is too important, complex, and unique to get a "pass" from Commission review. At a minimum, the Commission should require the NYISO to submit the proposed derating factor for review and approval before it may be implemented.

Moreover, the proposed placeholder methodology is deeply flawed. As proposed, in addition to honoring its day-ahead schedule, an ESR's UCAP would be based on its availability

⁶⁶ Tariff Filing, p. 45, n.131.

in the Real-Time market.⁶⁷ If the resource elects not to bid in the Real-Time market because, for instance, it intends to participate in the retail market for a given interval, the resource would be deemed unavailable in the Real-Time market and its UCAP downgraded accordingly even if it has been able to fulfill its Day-Ahead Bidding Requirement. This not only presents a significant barrier to dual participation, specifically, it creates a significant barrier for ESR participation in the wholesale capacity market, generally. The proposed rules effectively use capacity revenues as a blunt force instrument to compel a choice between forfeiting resource control to the NYISO or retaining operational control but forfeiting the opportunity to realize potentially incremental capacity revenues. Most market participants are not compelled to make the same choice under current rules, and the NYISO does not justify this unduly discriminatory treatment of ESRs.

The NYISO also proposes a dispatchability requirement that would serve as a barrier to entry. As proposed, the NYISO would recognize only one operating state for ESRs - "on" - and would treat these resources as fully dispatchable and available within their specified operating range.⁶⁸ ESRs not available

⁶⁷ Tariff Filing, p. 45.

⁶⁸ Id., p. 20.

when needed for dispatch would be penalized by adjusting the resource's derating factor to reduce its UCAP. The NYISO states that it will evaluate ESR dispatch parameters but not commitment parameters. Consequently, it will not develop information that could be used to recognize increased operational flexibility for ESRs in the future.

According to the NYISO, this market design is necessary because it is not technically feasible to evaluate a resource for commitment if it has a non-continuous operating range between its injecting and withdrawing states (i.e., a minimum output level and/or a minimum withdrawal level).⁶⁹ The NYISO, however, does not explain why ESRs with a continuous operating range (i.e., no minimum output level or minimum withdrawal level) should not be allowed to submit commitment parameters that would allow for recognition of multiple operating states. The NYISO at a minimum should explain why ESRs with a continuous operating range should be limited to market participation on a dispatch-only basis.

The net result of these proposals is that ESRs only can serve as capacity providers if they submit to NYISO control. Market participants may prefer to manage the availability of their storage resource for dispatch including, for instance, to

⁶⁹ Tariff Filing, p. 19.

manage their dual participation in the retail market. Choosing this option, however, would cause the ESR to be deemed unavailable and its UCAP adjusted downward accordingly.

The proposed dispatch-only model thus penalizes resource owners that prefer to manage when and how their resources participate in the markets. This is not how most non-ESRs are treated in the NYISO-administrated markets and the discriminatory treatment is not justified in the Tariff Filing.

Finally, the NYISO proposes that all ESRs should be required to provide real-time operating data via telemetry in six second intervals.⁷⁰ It is not clear from the Tariff Filing whether this requirement is necessary for every service that ESRs may provide, or only for a subset of those services. The telemetry requirement should reflect the actual data need for the service provided. Over-broad telemetry requirements can be prohibitively expensive and may not be necessary on a generally-applicable basis. The NYISO should be directed to ensure that the telemetry requirement is tailored to the service provided, and that ESRs will not be confronted with cost-prohibitive telemetry requirements that are not technically necessary for their participation in the NYISO-administrated markets.

⁷⁰ Tariff Filing, p. 28.

CONCLUSION

For the reasons set forth herein, the NY State Entities respectfully urge the Commission to reject the Tariff Filing because it exceeds the scope of the compliance filing required by Order No. 841 and the proposed market rules are unjust, unreasonable, and unduly discriminatory. The NYISO should be directed to submit, at the earliest practicable date that would enable implementation when required by Order No. 841, proposed tariff amendments that enable ESRs to participate as individual or aggregated resources in both the retail and wholesale markets and address the other ESR participation model deficiencies discussed herein.

Respectfully submitted,



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Dated: February 7, 2019
Albany, New York

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.

Dated: Albany, New York
February 7, 2019

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