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March 23, 2017

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. EL16-92-001 - New York State Public
Service Commission et al. v. New York Independent
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Motion and Answer of the New York State Public Service Commission, New York Power Authority, Long Island Power Authority, New York State Energy Research and Development Authority, City of New York, Advanced Energy Management Alliance, and Natural Resources Defense Council in the above-entitled proceeding. The parties have also been provided a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 402-1537.

Very truly yours,

S. Jay Goodman

S. Jay Goodman
Assistant Counsel

Attachment
cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York State Public)	
Service Commission)	
New York Power Authority)	
Long Island Power Authority)	
New York State Energy Research)	
And Development Authority)	
Advanced Energy Management)	
Alliance, and)	Docket No. EL16-92-001
Natural Resources Defense Council,)	
)	
Complainants,)	
)	
v.)	
)	
New York Independent System)	
Operator, Inc.)	
)	
Respondent.)	

MOTION FOR LEAVE TO ANSWER AND ANSWER OF COMPLAINANTS

INTRODUCTION AND EXECUTIVE SUMMARY

On June 24, 2016, Complainants in the above-captioned docket filed a Complaint Requesting Fast Track Processing (Complaint). The Complaint requested a blanket exemption from the buyer-side mitigation rules set forth in the New York Independent System Operator, Inc.'s (NYISO) tariffs, which limit the participation of certain "Demand Response" providers (Special Case Resources, or SCRs) in the NYISO's Installed Capacity (ICAP) market. On February 3, 2017, the Federal Energy Regulatory Commission (Commission) issued an "Order Granting

Complaint in Part and Denying in Part,” which granted the blanket exemption.¹

On March 6, 2017, the Independent Power Producers of New York, Inc. (IPPNY) filed a Request for Rehearing (Petition) on the SCR Order. IPPNY argues that the Commission’s decision to grant the blanket exemption was arbitrary and capricious, and not the product of reasoned decision making. Specifically, IPPNY maintains that the Commission erred in according greater weight to the evidence presented by the Complainants and the NYISO than arguments proffered by IPPNY in reaching its ultimate decision that SCRs merit an exemption from buyer-side mitigation rules. Further, IPPNY argues that the Commission erred by failing to provide guidance on how the NYISO should detect future market power abuses by SCRs.

The Commission engaged in reasoned decision making and articulated a rational connection between the substantial evidence in the record and each of its findings and conclusions. Thus, the Commission’s decision was not arbitrary and capricious and IPPNY’s allegations lack merit. IPPNY also fails to demonstrate that the existing tariff-based mechanism for monitoring the wholesale capacity market for market power abuses

¹ 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).

is inadequate with respect to demand response resources. For these reasons, the Complainants respectfully urge the Commission to deny the Petition.²

MOTION FOR LEAVE TO ANSWER

The Complainants request, pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.212 and 385.213), that the Commission grant this Motion and include the information contained herein in the record because it will assist the Commission in its decision making by clarifying and correcting certain matters alleged by IPPNY. Although unauthorized answers are generally discouraged, the Commission has accepted answers for similar reasons to those provided here by the Complainants.³

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 Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC. This filing represents the opinions of AEMA as an organization rather than those of any individual association members.

³ See, e.g., Entergy Louisiana, LLC, 156 FERC ¶ 61,146 (issued August 31, 2016) at PP 5, 15 (accepting an Answer to a Motion for Leave to Answer because it provides information that assisted the Commission in its decision-making process); see also Michigan Electric Transmission Company, 156 FERC ¶ 61,025 (issued July 8, 2016) at PP 6, 14; Midcontinent Independent System Operator, Inc., 155 FERC ¶ 61,130 (issued May 3, 2016) at PP 7, 25.

DISCUSSION

I. THE COMMISSION'S SCR ORDER WAS BASED ON SUBSTANTIAL EVIDENCE AND PROVIDED A REASONED EXPLANATION FOR EXEMPTING SCRS FROM MITIGATION

Pursuant to 18 C.F.R. § 385.713(c)(1), parties requesting rehearing must allege one or more specific error(s) in the final Commission decision. If rehearing is denied and the petitioner subsequently seeks judicial review of the SCR Order, a court will evaluate whether the Commission's decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."⁴ Under the narrow scope of judicial review, a court will confirm that the agency examined relevant data, explained its action, and provided a rational connection between the factual findings and decisions made.⁵ The Commission's "factfinding is conclusive if supported by substantial evidence."⁶ A court will not disrupt an agency's findings of fact and weighting of conflicting evidence unless it concludes that "no rational trier of fact could reach the conclusion drawn by the agency."⁷

⁴ Islander East Pipeline Co., LLC v. McCarthy, 525 F.3d 141, 150 (2d Cir. 2008).

⁵ Id. at 151.

⁶ New York v. Federal Energy Regulatory Comm'n, 783 F.3d 946, 958 (2d Cir. 2015) (citing 16 U.S.C. § 8251(b)).

⁷ Id. at 959.

In the SCR Order, the Commission explained that buyer-side mitigation rules "are intended to address market power exhibited by certain entities seeking to lower capacity market prices."⁸ The Commission found that retail-level demand response program payments to SCRs do not provide those resources with the incentive and ability to artificially suppress ICAP market prices and, therefore, they should not be subject to mitigation.⁹

IPPNY alleges that the Commission erred in determining that: (i) the State's retail demand response programs serve a different purpose than the NYISO's SCR program; and (ii) SCRs lack the incentive and ability to exercise market power. For each of these errors, IPPNY challenges the Commission's weighting of conflicting evidence in the record without advancing any valid argument that the Commission's decisions lacked a rational connection to the record.

Indeed, the Commission articulated a rational connection between substantial evidence in the record and each of its findings and conclusions. Significantly, each of these findings and conclusions individually and independently provides a sufficient basis to justify the Commission's decision to grant SCRs a blanket exemption from mitigation.

⁸ SCR Order at P 30 (quotation marks and citations omitted).

⁹ Id. at P 31.

Expert testimony provided by the NYISO's Supervisor of Market Mitigation and Analysis - Installed Capacity, Lorenzo P. Seirup, corroborated the Complaint by explaining that SCR program participation has remained flat despite expanding retail demand response programs.¹⁰ In addition, Mr. Seirup explained that retail demand response programs do not have the "ability to suppress prices in the NYISO's capacity markets at this time," and further increases in the "breadth or amount of compensation from" distribution-level programs would not "present a credible risk of capacity price suppression."¹¹

The Commission acknowledged these points in ruling that SCRs should not be subject to mitigation. The Commission also recognized that SCRs "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."¹² Further, SCR participation in the wholesale capacity market is dependent on program activation by the NYISO during a mandatory event. The Commission appropriately

¹⁰ Docket No. EL16-92-000, supra, Answer of the New York Independent System Operator, Inc., Att. II, Affidavit of Lorenzo P. Seirup (Seirup Affidavit) at ¶ 9 (dated July 21, 2016).

¹¹ Seirup Aff. at ¶ 10.

¹² SCR Order at P 32.

recognized that this limitation deprives SCRs of “the discretion to reduce load at will and expect to get paid.”¹³

Next, IPPNY urges the Commission to “look beyond the individual SCRs and consider the overall impact of the State’s policy adopting and supporting retail demand response programs” for evidence of a scheme to suppress prices.¹⁴ This argument pertains to the weight ascribed by the Commission to the competing evidence that was presented. As such, it does not assert or establish an error of fact or law or other reason to reconsider the SCR Order.

The Complaint detailed the numerous policy objectives furthered by retail demand response programs. Contrary to IPPNY’s baseless hyperbole, those objectives do not include artificially suppressing wholesale capacity prices. Regardless, IPPNY’s proposal asks the Commission to second-guess State energy policy that is squarely within the State’s jurisdiction over matters involving retail markets, reliability, and the distribution system. This request should be denied.

The Complaint and NYISO Answer provided ample evidence to support the Commission’s finding that SCRs do not have the incentive or ability to exert market power by artificially

¹³ Id. at P 33.

¹⁴ Petition at 4-5.

suppressing wholesale capacity prices. In addition, the Complaint presented evidence that call hours for the wholesale- and retail-level demand response programs diverged during a majority of program activations.¹⁵ This evidence, which is uncontroverted, demonstrates that there is no causal link between these disparate programs.¹⁶ Reserve shortages and bulk system contingencies that activate the SCR program do not activate the utility-administered distribution-level programs

¹⁵ In the Complaint, discussion of the retail programs focused on those administered by Consolidated Edison Company of New York, Inc. (Con Edison) because they have been operational for many years and have robust participation and performance data available. The Complaint explains that the NYPSC recently directed other utilities to develop similar programs. When the Complaint was filed, the retail programs administered in mitigated capacity zones by utilities other than Con Edison were new and, therefore, did not have any performance data available for discussion. Further, the Complainants explained that June 1, 2016 was the deadline for projects to be installed and operational under NYSERDA's Demand Management Program (DMP). (Complaint at 33.) Consequently, IPPNY's disagreement with application of the exemption to new DMP resources is moot.

¹⁶ While this lack of overlap emphasizes the distinct nature of the programs, it is important to recognize that completely distinct programs may nevertheless be sometimes called at the same time because there can be concurrent bulk system and distribution system needs. Accordingly, while IPPNY's assertion that retail-level programs are sometimes called at the same time as SCR resources is factually correct, it is inapposite because it does not demonstrate any error by the Commission or form the basis for rehearing of the SCR Order.

and, conversely, the local network contingencies that activate the distribution-level programs do not activate the SCR program.

Moreover, IPPNY's claim that the retail demand response programs comprise a market manipulation scheme rests on the argument that the "Commission erred in rejecting IPPNY's demonstration" that the utility-administered retail demand response programs are intended to reduce bulk system peak load. IPPNY relies on a single reference to a broad NYPSC order that does not govern any specific demand response program, or articulate any goal of reducing bulk system load. This argument also challenges only the weighting of competing evidence; it does not establish any error of fact or law warranting rehearing.

Regardless, the Commission properly concluded that the wholesale- and retail-level demand response programs "serve different purposes, provide different benefits, and compensate distinctly different services." In so ruling, the Commission relied on detailed evidence, including expert testimony, presented in the Complaint and NYISO Answer. Complainants, for instance, explained that the purpose of the SCR program is to provide load reductions in response to NYISO instructions for a discrete period of time to supplement generation when there are reserve shortages or transmission contingencies. This purpose is completely different than the utility-administered retail

programs, which support distribution system reliability and defer the need for costly investments in utility distribution systems, thereby moderating upward pressure on retail distribution rates.

II. THE COMMISSION SHOULD REJECT IPPNY'S CLAIM THAT THE NYISO SHOULD BE DIRECTED TO SET FORTH MITIGATION RULES FOR ANY POTENTIAL RETAIL DEMAND RESPONSE PROGRAMS THAT COULD BE DEVELOPED IN THE FUTURE

IPPNY claims that the Commission erred by failing to provide guidance on how the NYISO should determine whether a future retail demand response program provides an improper incentive to SCRs. However, no such guidance was necessary.

The NYISO already possesses the requisite direction and authority to address any future concerns that may arise. Specifically, the NYISO's Market Administration and Control Area Services Tariff (Services Tariff) requires the NYISO to refer suspicious market behavior to the Commission.¹⁷

IPPNY provides no justification for the development of a redundant mechanism for specific application to demand response resources, nor any explanation as why the SCR program merits enhanced scrutiny for potential market power abuses. The Commission, therefore, should reject IPPNY's claim that further action is needed at this time.

¹⁷ See Services Tariff at Att. H, § 23.1.2.

CONCLUSION

As discussed herein, the Commission should reject the arguments presented by IPPNY, and deny its request for rehearing on the SCR Order.

Respectfully submitted,

/s/ Paul Agresta, Esq.

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Dated: March 23, 2017
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
March 23, 2017

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