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Secretary

Three Empire State Plaza, Albany, NY 12223-1350  
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August 13, 2018

**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. EL18-188-000 - NRG Curtailment  
Solutions, Inc. v. New York Independent System  
Operator, Inc.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided with 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) 474-1585.

Very truly yours,

s/ *Alan T. Michaels*

Alan T. Michaels  
Manager

Attachment  
cc: Service List

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

NRG Curtailment Solutions, Inc.	)	
	)	
v.	)	Docket No. EL18-188-000
	)	
New York Independent System	)	
Operator, Inc.	)	

**NOTICE OF INTERVENTION AND COMMENTS  
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION**

**INTRODUCTION**

On July 24, 2018, NRG Curtailment Solutions, Inc. (NRGCS) filed a Request for Waiver, or in the Alternative, Complaint (Complaint) with the Federal Energy Regulatory Commission (FERC or the Commission) in the above-captioned proceeding. Within the Complaint, NRGCS alleges that the New York Independent System Operator, Inc.'s (NYISO) rules are unjust and unreasonable because they require Curtailment Service Providers (CSPs) and Responsible Interface Parties (RIPs) seeking to participate in the NYISO's Installed Capacity (ICAP) market to use the services of Meter Service Providers (MSPs) or Meter Data Service Providers (MDSPs) that are certified by the New York State Department of Public Service (NYDPS) to install

and read non-revenue grade interval meters.<sup>1</sup> As NRGCS notes, however, NYDPS only certifies entities as MSP/MDSPs if the entity provides meters or reads meters in place of a customer's utility company, and does not certify entities, such as NRGCS, that solely provide wholesale Demand Response (DR) services. Since the NYDPS has not certified NRGCS as an MSP/MDSP, the Complaint seeks appropriate relief from the NYISO rules so that NRGCS may participate as a DR provider in the NYISO's ICAP market. As discussed below, the New York State Public Service Commission (NYPSC) supports the relief sought in the Complaint.<sup>2</sup>

#### **NOTICE OF INTERVENTION**

The NYPSC hereby submits its timely Notice of Intervention and Comments in the above-captioned proceeding pursuant to the Commission's Notice of Complaint, issued on July 25, 2018,<sup>3</sup> and Rule 214(a)(2) of the Commission's Rules of

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<sup>1</sup> Complaint at 1, citing, see, e.g., NYISO Manual 5, Section 6 (Day-Ahead Demand Response Program Manual); Manual 7, Section 5 (Emergency Demand Response Program Manual); See also Market Administration and Control Area Services Tariff (MST) Section 5.12.11, and MST Attachment G, Section 22.8.

<sup>2</sup> 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.

<sup>3</sup> Published in the Federal Register Vol. 83, No. 147 at 36924 (July 31, 2018).

Practice and Procedure.<sup>4</sup> 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. The NYPSC is therefore a State Commission as defined in section 3(15) of the Federal Power Act (FPA),<sup>5</sup> and hereby intervenes as a party as a matter of right.<sup>6</sup>

Copies of all correspondence and pleadings should be addressed to:

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#### COMMENTS

The NYPSC has been promoting DR programs in New York to assist in meeting the State's important policy goals, such as achieving targeted load relief needed for distribution system reliability purposes, deferring and/or avoiding expensive distribution-level upgrades, and/or reducing electric power

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<sup>4</sup> 18 C.F.R. §385.214(a)(2).

<sup>5</sup> 16 U.S.C. §796(15).

<sup>6</sup> 18 C.F.R. §385.214(a)(2).

sector emissions.<sup>7</sup> The NYPSC also recognizes that wholesale DR programs serve an important role in supporting grid reliability and attaining state policy goals. The Complaint, however, identifies NYISO rules that appear to be inadvertently hindering the entry of wholesale DR market participants. Accordingly, the NYPSC requests that the Commission find that the NYDPS' MSP/MDSP certification programs should not be used as the basis for demonstrating that wholesale DR providers are capable of accurately measuring and verifying load reductions.

#### **History of MSP/MDSP Programs in New York**

In the early 1990's, the NYPSC instituted a proceeding to examine competitive opportunities for electric service in New York, and to closely investigate retail tariff filings that involve pricing flexibility for individualized consumers.<sup>8</sup> This effort ultimately led, in part, to the NYPSC opening up utility

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<sup>7</sup> See, e.g., Case 09-E-0115 Proceeding on Motion of the Commission to Consider Demand Response Initiatives; Case 14-E-0423 Proceeding on Motion of the Commission to Develop Dynamic Load Management Programs; see also, Docket No. EL16-92-000, New York State Public Service Commission, et al. v. New York Independent System Operator, Inc., Complaint Requesting Fast Track Processing of the New York Public Service Commission, et al. (filed June 24, 2016) at 3.

<sup>8</sup> Case 93-M-0229 Proceeding on Motion of the Commission to Address Competitive Opportunities Available to Customers of Electric and Gas Service and to Develop Criteria for Utility Responses, Order Instituting Proceeding (issued March 19, 1993), 2-3.

metering services to competition.<sup>9</sup> The NYPSC intended to grant competitive providers opportunities to install state-of-the-art meters and offer energy management and demand response programs; this initiative was expected to provide incentives for development of the State's advanced metering infrastructure.<sup>10</sup> In conjunction with these competitive opportunities, the NYPSC established a policy that electric utilities should only invest in new advanced metering technology and metering infrastructures if they could substantiate a cost savings relative to current practice, and indicated that the new investments should not create new, additional stranded costs or be anticompetitive in nature.<sup>11</sup>

In 2006, the NYPSC noted that the expected business investment by the State's competitive providers in advanced metering had not materialized since the inception of competitive electric metering; and that this and other dramatic changes in electricity markets warranted a change from a policy based upon expectations that the competitive market would spur the

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<sup>9</sup> Case 00-E-0165 In the Matter of Competitive Metering and in the matter of Competitive Opportunities Regarding Electric Service, Order Concerning Competitive Metering (issued January 31, 2001).

<sup>10</sup> Case 94-E-0952 In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Regarding Proposed Principles to Guide the Transition to Competition (issued December 22, 1994) at 5.

<sup>11</sup> Case 94-E-0952, supra, Opinion 97-13 (issued August 1, 1997), p. 21.

development of advanced metering to a policy that relies upon electric distribution utilities to install the necessary advanced metering infrastructure to realize the State's energy policy goals. Accordingly, the NYPSC directed electric utilities to develop and deploy, to the extent feasible and cost effective, advanced metering systems for the benefit of all customers.<sup>12</sup>

Since 2006, utility investments in advanced metering infrastructure (AMI) increased significantly. For example, the state's largest utility, Consolidated Edison Company of New York, Inc., as well as Orange and Rockland Utilities, Inc., have already received NYPSC approval for system-wide implementation of AMI.<sup>13</sup> Similar proposals are under consideration for other utilities in New York State. Although competitive opportunities continue to exist in the state for metering services, the expected investment by competitive providers in advanced metering did not materialize prior to utility AMI investments, and it appears unlikely that they could match the economies of scale presented today by utility AMI. Thus, New York State is

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<sup>12</sup> Case 00-E-0165, supra, Order Relating to Electric and Gas Metering Services (issued August 1, 2006).

<sup>13</sup> Case 15-E-0050, Con Edison Electric Rates, Order Approving Advanced Metering Infrastructure Business Plan Subject to Conditions (issued March 17, 2016); Case 17-M-0178, Orange and Rockland Program Advancement Proposal, Order Granting Petition in Part (issued November 16, 2017).

achieving the intended goals of technological innovation in metering and expanded energy management and demand response offerings through the proliferation of utility AMI.

At the time the competitive meter service programs were established, the NYPSC did not anticipate or intend that the NYDPS certifications would be used by the NYISO as a requirement for DR providers to participate in the wholesale markets. This requirement lies entirely outside the purpose for creating competitive meter service programs. The NYDPS's MSP/MDSP review processes are designed solely to evaluate the qualifications of applicants to install and read meters for utility billing purposes, and are entirely devoid of criteria specific to CSP/RIP functions in the wholesale DR market.

#### **Future of MSP/MDSP Programs in New York**

The future of competitive metering services is presently in question in New York. Upon information and belief, there are no known utility customers today who avail themselves of competitive metering services, nor have there been for some time.

Given that competition amongst MSPs and MDSPs has not materialized and that the existence of these programs is creating confusion amongst market participants, the NYPSC may need to reevaluate whether the programs should be terminated altogether. For instance, the NYPSC has separately promulgated



rules governing distributed energy resources (DERs), although there are no clear roles established for competitive providers of DER metering services.<sup>14</sup> As a result, the persistence of MSP/MDSP eligibility could create confusion in the nascent DER market.

Moreover, continuing the NYISO's requirement for CSPs/RIPs to hold MSP/MDSP certifications only extends the same confusion to the wholesale markets. Therefore, irrespective of the merits of applying MSP/MDSP certification requirements to CSP/RIP functions in wholesale DR markets, such certifications may no longer be valid or available, depending upon the outcome of the NYPSC's evaluation.

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<sup>14</sup> Case 15-M-0180, Regulation and Oversight of Distributed Energy Resource Providers, Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers (issued October 19, 2017).

**CONCLUSION**

Based on the forgoing considerations, the NYPSC requests that the Commission grant the relief sought by NRGCS.

Respectfully submitted,

s/ *John J. Sipos*

John J. Sipos  
Acting General Counsel  
Public Service Commission  
of the State of New York  
By: Alan T. Michaels  
Manager  
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Dated: August 13, 2018  
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  
August 13, 2018

s/ *Alan T. Michaels*  
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