

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

**New York State Public Service Commission)
and the New York State Energy Research and)
Development Authority)**

Complainants,)

v.)

Docket No. EL19-86-000

**New York Independent System)
Operator, Inc.)**

Respondent.)

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (the “Commission”) Rules of Practice and Procedure,¹ Independent Power Producers of New York, Inc. (“IPPNY”) hereby moves for leave to file this answer to the October 1, 2019 motion for leave to answer and answer of the New York State Public Service Commission (“NYPSC”) and the New York State Energy Research and Development Authority (“NYSERDA”) (together, the “Complainants”) to comments and protests opposing the Complainants’ complaint filed against

¹ 18 C.F.R. §§ 385.212, 385.213 (2019).

the New York Independent System Operator, Inc. (“NYISO”) on July 29, 2019, including IPPNY’s August 19, 2019 protest.²

The Commission should reject the Complainants’ arguments in their October 1 Answer because they lack merit. None of the Complainants’ arguments overcome their failure to meet their burden under Section 206 of the Federal Power Act to prove that the application of the NYISO’s buyer-side market power mitigation measures (“BSM Measures”) to new electric storage resources (“ESRs”) is unjust and unreasonable and that their proposal for a blanket exemption from the BSM Measures for ESRs (“ESR Exemption”) or their alternative to exempt up to 300 MW of ESRs from the BSM Measures each calendar year (“300 MW Cap”) should be identified by the Commission as a just and reasonable replacement structure.³

I. MOTION FOR LEAVE TO ANSWER

IPPNY requests leave to file this Answer because it will help to clarify the issues before the Commission, provide additional information that will assist the Commission, or will otherwise be helpful in the development of the record in this proceeding. Although Rule 213(a)(2) generally prohibits certain types of answers, including answers to protests and answers, the Commission has discretion to waive that prohibition for good cause shown. The basis for

² Docket No. EL19-86-000, *New York Pub. Serv. Comm’n et al. v. New York Indep. Sys. Operator, Inc.*, Motion for Leave to Answer and Answer of the New York State Public Service Commission and the New York State Energy Research and Development Authority (Oct. 1, 2009) (“October 1 Answer”); Docket No. EL19-86-000, *supra*, Complaint on Behalf of the New York State Public Service Commission and the New York State Energy Research and Development Authority and Request for Fast Track Processing (July 29, 2019) (“Complaint”); Docket No. EL19-86-000, *supra*, Protest of Independent Power Producers of New York, Inc. (Aug. 19, 2019) (“August 19 Protest”). The NYISO filed an answer, and the Market Monitoring Unit filed comments, opposing the Complaint. Docket No. EL19-86-000, *supra*, Answer of the New York Independent System Operator, Inc. (Aug. 19, 2019) (“NYISO Answer”); Docket No. EL19-86-000, *supra*, Motion to Intervene and Comments of the New York ISO’s Market Monitoring Unit (Aug. 19, 2019) (“MMU Comments”).

³ For the sake of brevity, IPPNY’s answer addresses only the most flawed points in the Complainants’ October 1 Answer. IPPNY’s silence on any other argument should not be construed as IPPNY’s acceptance of that argument.

such waiver has included whether the answer leads to a more accurate and complete record, helps the Commission understand the issues, clarifies matters in dispute or errors, responds to new issues raised, or provides information that will assist the Commission in its decision-making process.⁴ IPPNY's answer corrects misstatements, mischaracterizations, and omissions in the Complainants' October 1 Answer regarding the NYISO's BSM Measures and the impacts of exemptions from these rules and will, therefore, assist the Commission in reaching its decision. These misstatements, mischaracterizations and omissions provide the grounds to reject the Complainants' October 1 Answer because it muddies and confuses, rather than clarifies, the record in this proceeding. If the Commission nevertheless grants the Complainants' motion requesting leave to file an answer and accepts the October 1 Answer, it should similarly grant IPPNY's request to answer and accept this answer. Accordingly, IPPNY has provided ample basis for the Commission to accept its answer.

II. ANSWER

A. The Commission Should Reject Complainants' Attempt to Downplay the Impacts of Their Proposed ESR Exemption.

In its August 19 Protest, IPPNY demonstrated that the Complainants' proposed ESR Exemption would significantly harm the NYISO's wholesale market and system reliability. In their October 1 Answer, Complainants attempted to dismiss these adverse impacts by arguing that IPPNY ignored factors and circumstances that would moderate the level of new ESR entry in Mitigated Capacity Zones and their potential market and reliability impacts.⁵

⁴ See, e.g., *Mirant Energy Trading et al. v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007 at P 33 (2008); *BP West Coast Prods. LLC et al. v. SFPP, L.P. et al.*, 121 FERC ¶ 61,239 at P 34 (2007); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 at P 13 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co. et al.*, 105 FERC ¶ 61,053 at P 34 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 at P 18 (2003).

⁵ October 1 Answer at 8-12.

Specifically, the Complainants claimed that the amount of ESR capacity that will participate in the NYISO’s installed capacity (“ICAP”) market in Mitigated Capacity Zones will be significantly less than the 3,000 MW of ESRs required by New York’s Climate Leadership and Community Protection Act⁶ by 2030 in the State.⁷ The Complainants asserted that, based on an analysis performed by Staff from the Department of Public Service and NYSERDA, approximately 1,111 MW and approximately 388 MW of ESR capacity may be developed in New York City (“NYC”) and Zones G-J, respectively, by 2030.⁸ The Complainants asserted that the total amount of ESR MWs that will be counted toward establishing the spot market clearing prices will be further reduced by some unstated degree due to the NYISO’s proposed capacity eligibility structure that would lessen the ICAP value of duration-limited resources.⁹ In addition, Complainants contended that some unstated amount of ESRs that will be connected to the distribution system by 2025 will not participate in the ICAP market and that the ESR Exemption will not harm reliability because existing reliability standards and existing processes designed to ensure system reliability will not change.¹⁰ Finally, the Complainants argued that market impacts will be limited because proposed environmental regulations and the old age of the New York generation fleet will cause significant retirements.¹¹

⁶ See New York State Climate Leadership and Community Protection Act, S.B. 6599, 2019 Leg., 242nd Sess. (N.Y. 2019) (codified as Ch. 106, L. 2019) (“Climate Act”) (mandating, *inter alia*, the deployment of 6,000 MW of solar resources by 2025, 3,000 MW of ESRs by 2030 and 9,000 MW of offshore wind resources by 2035).

⁷ October 1 Answer at 9.

⁸ *Id.*

⁹ *Id.* at 10.

¹⁰ *Id.* at 10-11.

¹¹ *Id.*

The Complainants arguments in their October 1 Answer are self-contradictory. Complainants' claims regarding the limited entry of ESRs in Mitigated Capacity Zones is inconsistent with their request for a 300 MW Cap to be assessed on an annual basis. Complainants can't have it both ways, arguing the need for 3,000 MW of exempt ESRs over 10 years to satisfy the 2030 ESR requirement in their Complaint while, in the same proceeding, turning around and arguing in their October 1 Answer that adverse market impacts will be limited because significantly less than that amount will actually enter the NYISO's ICAP market in Mitigated Capacity Zones.

In addition, Complainants' argument that IPPNY exaggerated the harm to the market because the entry of ESRs in Mitigated Capacity Zones will be less than 3,000 MW is belied by their unsupported argument that the entry of ESRs will only trigger a short-term change in wholesale capacity prices because "quick market responses" will push prices back up.¹² As Complainants correctly acknowledged, the slopes of the ICAP Demand Curves in the Mitigated Capacity Zones are steep, meaning only a small amount of additional supply will cause a market response. Based on the July 2019 clearing prices, each 100 MW of additional unforced capacity added in Zone J will reduce prices by approximately \$1.38/kW-month in Zone J and \$0.84/kW-month in Zone G-J. The more than 1,100 MW that the Complainants now claim is the likely amount that would enter the Zone J market would itself be sufficient to cause ICAP prices in Zone J and Zones G-J to collapse so low that these zones would default to the New York Control Area ("NYCA") ICAP prices under the NYISO's cascading rules. By way of reference, for the

¹² *Id.* at 11.

past year, the NYCA has cleared at an average of less than \$.50/kW-month in the winter and less than \$1.50/kW-month in the summer.

Moreover, Complainants failed to acknowledge that the market response that would likely result from this level of suppression of ICAP prices would be the forced and entirely unjustified retirement of otherwise economic existing resources. If new uneconomic resources supported with out-of-market compensation are permitted to cause the retirement of otherwise economic resources due to the artificial suppression of ICAP prices at the hands of the State's public policy initiatives, no matter how well-intentioned,¹³ the NYISO's markets will cease being competitive, and investors will not risk their capital on a new merchant project. Their willingness to continue investing in existing merchant projects will at best be limited, if not entirely deterred. As IPPNY stated in its August 19 Protest, the result of an ESR Exemption is that subsidies will beget more subsidies.

Further, as demonstrated in the MMU Comments, Complainants' acknowledgement of the potential for significant retirements undercuts their alleged need for an ESR Exemption.¹⁴ Under Part A of the Mitigation Exemption Test ("MET"), a new entrant is exempt from the BSM Measures so long as the surplus capacity margin remains less than 6%.¹⁵ Retiring resources as mandated by the State's proposed environmental regulations that will require the reduction of NOx emission levels significantly by 2025 at roughly 3,500 MW of peaking facilities will cause

¹³ See *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288, 1298 (2016) (holding state action, no matter how legitimate, cannot intrude on the Commission's authority over wholesale rates); see also *Calpine Corporation, et al. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) ("PJM MOPR Order") at P 156 (holding State action providing out-of-market support cannot cause unjust and unreasonable and unduly discriminatory rates in PJM "regardless of the intent motivating the support").

¹⁴ See MMU Comments at 10.

¹⁵ *Id.*

the surplus capacity margin to drop, allowing State-supported resources to receive exemptions under Part A of the MET. The Complainants' second order claims that, even if such retirements were to occur, they may not perfectly align with the timing of the Part A MET for ESRs, or alternatively, that other resources such as offshore wind and repowered resources could offset the level of capacity that exits the market actually prove IPPNY's point that the ESR Exemption will impact the market significantly.¹⁶ If ESRs can enter the market exempt from the BSM Measures when the market was, by definition, otherwise too long for them to economically enter it, it will reduce ICAP prices and make it more likely that other projects such as offshore wind, repowered projects to address environmental regulations, and projects necessary to maintain reliability will need out-of-market compensation to support their operations.¹⁷

The Commission should also reject Complainants' claim that the ESR Exemption will not harm reliability because existing reliability standards and procedures will remain in place. The artificial suppression of ICAP prices caused by unmitigated out-of-market entry harms the ability of the market to send accurate price signals to incent investment needed to maintain reliability through either new entry or retention of needed existing resources. The artificial suppression of market prices will prevent the market from efficiently reflecting the need for competitive new

¹⁶ The Commission should reject Complainants' contention that the ESR Exemption is the only available mechanism to avoid interfering with the State's ESR objectives. As IPPNY underscored in its August 19 Protest, the Commission ruled that the BSM Measures do "not prescribe whether or what types of generation facilities should be built" in the State. The State is free to determine the development of ESRs should be supported; it just cannot eviscerate the competitive capacity market to implement its policy. *See* IPPNY August 19 Protest at 25 (quoting *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at PP 110–112 (2008)).

¹⁷ Complainants' assertion that "IPPNY provides no justification for its proposition that market rules should be used only to limit the capacity market impacts of policies that lead to supply additions while ignoring policies that reduce supply" is a massive mischaracterization of IPPNY's position. No place in its August 19 Protest did IPPNY even suggest that market rules should be limited to protecting the market from policies that lead to supply additions. Market policies that lead to supply reductions are addressed by other market power mitigation measures that are not at issue in this Complaint proceeding. For example, if an economic resource attempted to leave the market for its own gain, which is analogous to the State paying an uneconomic resource to enter the market, the resource's exit would be subject to the NYISO's physical withholding mitigation measures.

entry, additional investments in existing facilities, or adjustments to the location and/or timing of projects. Rather than rely on the market to perform this role, the Complainants' ESR Exemption would require the NYISO to ensure resource adequacy through an administrative process that is less efficient than the NYISO's ICAP market.

As IPPNY demonstrated in its August 19 Protest, implementation of the ESR Exemption would be especially problematic now due to proposed environmental regulations that could cause the retirement of roughly 3,500 MW of fossil peaking facilities in New York City and Long Island by 2025. ESRs will not be effective replacements for all these facilities as their retirement will lead to significant system needs with durations reaching up to 15 hours in certain load pockets. Based on the current and reasonably foreseeable state of technology, investments in fossil generation will be required to maintain reliability. The market signal must remain stable with the price reaching the net cost of new entry, unimpeded by out-of-market subsidies and price suppression, for merchant new entry to be willing to enter or reinvest in existing resources to provide the service necessary to comply with reliability standards and meet the system's operational needs in southeastern New York.

B. The Impact of the ESR Exemption Request Due to the ESR Program's Size and the Core Connection Between Implementation of the NYISO's Carbon Pricing Proposal and the BSM Structure Both Require the Commission's Consideration.

In their Answer, the Complainants asserted that the MMU has supported applying the BSM Measures "precisely because [ESR] development contributes to a statewide policy initiative," quoting the MMU Comments where the MMU specified the need for these measures was driven by the aggregate amount of resources that would qualify for the exemption if

adopted.¹⁸ The Complainants also both asserted that an exemption from the BSM Measures is the *only* mechanism available to harmonize the NYISO’s markets with the State’s ESR deployment goals while at the same time urging the Commission to find IPPNY’s endorsement of the NYISO’s carbon pricing proposal to address these same issues was a “sweeping proposal[] to fundamentally redesign the wholesale capacity market” that was “beyond the scope of the Complaint.”¹⁹ Both positions are incorrect.

In its comments, the MMU focused on the fact that Complainants had failed to demonstrate that ESR entry on the scale and in the location proposed by Complainants would not result in the suppression of capacity prices.²⁰ Likewise, citing to the Commission’s PJM MOPR Order and focusing on the fact that the Commission has not required evidence of intent when resources receiving out of market support would suppress capacity market clearing prices, the NYISO correctly concluded in its answer that Complainants’ requested exemption significantly would artificially suppress capacity prices and, therefore, it should be denied.²¹ The Commission previously has held that mitigation rules must be applied when out of market support payments “have reached a level sufficient to significantly impact the capacity market clearing prices and the integrity of the resulting price signals on which investors and consumers rely to guide the orderly entry and exist of capacity resources” thereby rendering such prices unjust and

¹⁸ See October 1 Answer at 17.

¹⁹ *Id.* at 12-17.

²⁰ See MMU Comments at 8 (stating the “large quantities of subsidized resources could overwhelm the supply-demand balance in the capacity market” and the BSM measures cannot be driven by the size of individual projects but instead must focus on the aggregate impact of the program as a whole).

²¹ See NYISO Answer at 6-7.

unreasonable.²² Consistent with its past determinations, the Commission should deny the requested ESR Exemption.

Nor should the link between implementation of the NYISO's carbon pricing proposal and its resultant effect on the BSM structure be summarily cast to the side. In its analysis of the benefits and costs of the NYISO's proposed program following the State's enactment of the Climate Act, the Analysis Group addressed the interrelationship between the NYISO's carbon pricing proposal and its BSM Measures. Noting that the NYISO already had BSM Measures in place but there were also a number of open proceedings in which parties were seeking to both significantly expand and significantly limit their scope, the Analysis Group pointed to the fact that the NYISO proposed its carbon pricing mechanism as a tool to align State public policy initiatives with federally defined wholesale competitive market structures *without* the need to trigger additional changes to the current BSM structure.²³ The Analysis Group concluded:

A carbon pricing policy as proposed through the NYISO stakeholder process represents a fair and transparent, competitive, market-based mechanism to compensate resources based on generating resource attributes (*i.e.*, zero-emissions or renewable resource attributes). Administration of a carbon pricing mechanism would help to align state policy with the state's wholesale markets, and reduce the potential for FERC to impose further BSM actions by guiding the development of new clean energy resources substantially through pricing in competitive wholesale markets.²⁴

²² See PJM MOPR Order at PP 150, 156; see also *New York Indep. Sys. Operator, Inc.*, 124 FERC 61,301 (2008) at P 29 (finding all uneconomic entry has the effect of depressing prices below the competitive level).

²³ See Analysis Group (Tierney and Hibbard), "Clean Energy in New York State: The Role and Economic Impacts of a Carbon Price in NYISO's Wholesale Electricity Markets – Summary for Policy Makers and Final Report" (October 3, 2019) ("Analysis Group Findings") at 40, available at <https://www.nyiso.com/documents/20142/2244202/Analysis-Group-NYISO-Carbon-Pricing-Report.pdf/81ba0cb4-fb8e-ec86-9590-cd8894815231>

²⁴ *Id.* at 42-43.

Thus, contrary to Complainants' assertions, their proposed ESR Exemption is not the only available mechanism to accomplish the State's ESR deployment goals. The NYISO's carbon pricing proposal presents a market-based means to address the development of renewable resources and ESRs comprehensively as the State implements the Climate Act and, thus, warrants the Commission's consideration in this context.

III. CONCLUSION

For the aforementioned reasons, the Commission should reject the Complainants' October 1 Answer and deny the Complaint.

Dated: October 21, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Albany, NY, October 21, 2019

By: David B. Johnson
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