

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

New York Independent System Operator, Inc.)

Docket No. ER19-467-000

**COMMENTS OF INDEPENDENT
POWER PRODUCERS OF NEW YORK, INC.**

On December 3, 2018, the New York Independent System Operator, Inc. (“NYISO”) filed proposed revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”) and Open Access Transmission Tariff (“OATT”) (collectively, the “NYISO Tariffs”) with the Federal Energy Regulatory Commission (“Commission”)¹ in compliance with the Commission’s Order No. 841, *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, which was issued by the Commission on February 15, 2018.² The NYISO’s proposed revisions to the NYISO Tariffs consist of new and amended market rules to facilitate the participation of Energy Storage Resources (“ESRs”) in the NYISO-administered Energy, Ancillary Services, and Installed Capacity (“ICAP”) markets.³

In its December Filing, the NYISO stated that it is not proposing any substantive changes to its Buyer Side Market Power Mitigation Measures for ICAP (the “BSM Rules”), and, thus, “[t]he current BSM Rules would apply to the entry of new Energy Storage Resources that are

¹ Docket No. ER19-467-000, *N.Y. Indep. Sys. Operator, Inc.*, Compliance Filing (Dec. 3, 2018) (the “December Filing”).

² *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018); Docket Nos. RM16-23-000 et al., Errata Notice (Feb. 28, 2018); 83 Fed. Reg. 9580 (Mar. 6, 2018) (“Order No. 841”).

³ Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in the NYISO Tariffs.

larger than 2 MW.”⁴ The NYISO did propose to reinstate a specific provision of its BSM Rules that would apply certain aspects of such rules to the entry in Mitigated Capacity Zones of new ESRs and other Generators that are 2 MW or less unless otherwise exempt from such rules under the Services Tariff (the “BSM Rules Proposal”).⁵

Pursuant to the Commission’s Notice of Extension of Time, issued on December 14, 2018, in the above-captioned docket, Independent Power Producers of New York, Inc. (“IPPNY”) hereby comments in support of the NYISO’s BSM Rules Proposal.⁶ The Commission should accept the NYISO’s BSM Rules Proposal because it removes uncertainty as to the process for determining Offer Floors and exemptions from Offer Floors under the BSM Rules with respect to Generators that are not required to satisfy a deliverability requirement, which include Generators less than or equal to 2 MW. As the NYISO establishes, this revision is required to reinstate tariff language that the NYISO mistakenly removed in its 2016 tariff filing proposing rules to govern the participation of Behind-the-Meter Net Generation Resources (the “BTM:NG Filing”) in the NYISO’s markets and is necessary to ensure that the BSM Rules operate as intended.

I. BACKGROUND

A. The BSM Rules

The BSM Rules, which have been in place for more than a decade, are the NYISO’s primary tool to ensure that uneconomic ICAP supply that enters the market in the Mitigated Capacity Zones does not artificially suppress ICAP prices to the detriment of the competitive markets and the investors that rely on such markets. To prevent artificial price suppression, the

⁴ December Filing at 51.

⁵ *Id.* at 51–54.

⁶ IPPNY filed a doc-less motion to intervene in this docket on December 14, 2018.

NYISO's Services Tariff sets an Offer Floor on the Unforced Capacity ("UCAP") offers of new Generators entering Mitigated Capacity Zones equal to the lesser of 75% of Mitigated Net Cost of New Entry ("CONE") or the new entrant's own Unit Net CONE. Pursuant to Section 23.4.5.7 of the Services Tariff, offers to supply UCAP from all new ICAP Suppliers in Mitigated Capacity Zones must equal or exceed the applicable Offer Floor unless the ICAP Supplier is eligible for one of the exemptions specified in Section 23.4.5.7.2.

Two of the exemptions apply if the NYISO determines that the new entrant will be economic based on a forecast of future ICAP prices performed under Section 23.4.5.7.2, and a third exemption applies if the new entrant qualifies for the Competitive Entry Exemption pursuant to Section 23.4.5.7.9.⁷ The BSM Rules explicitly provide that an Offer Floor applies to UCAP offers from all new Generators unless exempt. The NYISO must evaluate Generators that are "Examined Facilities" to determine whether they are eligible for one of the exemptions listed in the Services Tariff, and if not exempt, the Offer Floor that will apply.

Prior to 2016, Section 23.4.5.7.3 of the Services Tariff defined three specific categories of Examined Facilities. Category I and II facilities included proposed new Generators that are members of a Class Year and that had requested Capacity Resource Interconnection Service ("CRIS") or new or existing Generators that expected to receive CRIS rights from another

⁷ The Commission directed the NYISO to implement an exemption for intermittent renewable generators and generators that are self-supplied. *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at PP 51, 62 (2015), *reh'g denied*, 154 FERC ¶ 61,088 (2016). The Commission has not accepted the NYISO's proposed tariff language regarding these exemptions.

Generator.⁸ Category III facilities included, in relevant part, “each proposed new Generator that is . . . not subject to a deliverability requirement (and therefore, is not in a Class Year).”⁹

B. The BSM Rules Proposal

As the NYISO explained in its December Filing, it mistakenly removed the reference to Category III facilities from Section 23.4.5.7.3 of the Services Tariff in its BTM:NG Filing.¹⁰

The NYISO stated that it removed Category III facilities as a “housekeeping” revision because the NYISO believed at the time that “it was ‘no longer possible for a proposed new project to be a Category III facility.’”¹¹

However, as the NYISO established in its December Filing, efforts involving ESRs have caused the NYISO to reassess its conclusions in this regard since the BTM:NG Filing.

Specifically, it has become evident that a new Generator 2 MW or less interconnecting in a Mitigated Capacity Zone could be a Category III facility because Generators 2 MW or less are not subject to the deliverability requirement.¹² The NYISO stated that such Generators would not fall within the currently effective definitions of Category I or Category II facilities under the BSM Rules.¹³ Therefore, the NYISO stated that its treatment of such Generators 2 MW or less under the BSM Rules would be unclear.¹⁴ The NYISO stated that “there would have been no

⁸ Pursuant to the Services Tariff, a Generator must have CRIS rights to qualify as an Installed Capacity Supplier. Pursuant to the OATT, Generators larger than 2 MW must satisfy a deliverability requirement to obtain CRIS. *See* OATT § 25.3.1.

⁹ December Filing at 51–53.

¹⁰ *Id.* at 52.

¹¹ *Id.* (citations omitted).

¹² *Id.* Pursuant to the OATT, Generators 2 MW or less are eligible to obtain CRIS, and therefore eligible to supply UCAP, without having to enter a Class Year and satisfy a deliverability requirement. *See* OATT § 25.3.1.

¹³ December Filing at 52.

¹⁴ *Id.*

ambiguity concerning their status prior to the BTM:NG Filing’s elimination of Category III.”¹⁵

Thus, the NYISO proposed in its December Filing “to return the relevant portion of the Category III language to the tariff” and make other limited additions to the tariff to include relevant and necessary references to Category III facilities.¹⁶

II. THE COMMISSION SHOULD ACCEPT THE BSM RULES PROPOSAL AS JUST AND REASONABLE

The Services Tariff does not provide, the NYISO has not made a tariff filing intending to provide, and the Commission has not directed the NYISO to propose, an exemption from the imposition of an Offer Floor to new entrants in Mitigated Capacity Zones that are 2 MW or less or are not required to satisfy a deliverability requirement to be eligible to supply ICAP. As the NYISO indicated in its December Filing, its BTM:NG Filing did not intend to exempt Generators 2 MW or less from the imposition of an Offer Floor. There was no discussion whatsoever in the BTM:NG Filing, nor in any of the comments and protests that were filed in response thereto, regarding an exemption for Generators 2 MW or less.¹⁷ Nor did the Commission even mention in its order accepting the NYISO’s proposed tariff revisions in its BTM:NG Filing that the effect of removing the Category III language would result in exempting Generators 2 MW or less in Mitigated Capacity Zones from the imposition of an Offer Floor.¹⁸

The Commission should reject any potential arguments that the NYISO’s BTM:NG Filing exempted Generators 2 MW or less from the imposition of an Offer Floor as the currently effective BSM Rules clearly impose an Offer Floor on all new Generators entering Mitigated

¹⁵ *Id.*

¹⁶ *Id.* at 53.

¹⁷ See generally Docket No. ER16-1213-000.

¹⁸ See generally *N.Y. Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,166 (2016).

Capacity Zones, regardless of their size, unless exempt pursuant to the exemptions listed in the Services Tariff. These exemptions are unrelated to Generator size. The BTM:NG Filing merely removed language concerning a category of Examined Facilities mistakenly believed to have been eliminated from the NYISO markets, not whether an Offer Floor applies. As noted above, neither the BTM:NG Filing nor the Commission’s order accepting the BTM:NG Filing intended to provide an exemption from imposition of an Offer Floor.

Further, applying an exemption to Generators less than or equal to 2 MW from imposition of an Offer Floor would violate the Commission’s order expressly rejecting a request in a complaint filed under Section 206 of the Federal Power Act against the NYISO seeking, *inter alia*, to exempt Generators less than or equal to 20 MW from the BSM Rules.¹⁹ In that order, the Commission ruled that “[t]he proposed 20 MW cut-off would exempt several types of projects that may have the incentive and ability to exercise buyer-side market power to artificially suppress capacity prices”²⁰ While the Commission permitted a narrow exemption from the BSM Rules for intermittent renewable resources with low capacity factors, subject to a cap, on the grounds that such “resources have limited capacity factors and are therefore a poor choice to suppress market prices,”²¹ the Commission ruled that resources with relatively higher capacity factors that are under 20 MW should not be exempted because they could artificially suppress ICAP prices.²²

ESRs are not intermittent resources like wind and solar resources with low capacity factors. To the contrary, they are fully controllable and can be dispatched during peak periods.

¹⁹ *N.Y. Pub. Serv. Comm’n et al. v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022 (2015), at PP 78–79.

²⁰ *Id.* at P 78.

²¹ *Id.* at P 79.

²² *Id.*

ESRs, like relatively higher capacity factor gas and oil facilities, are thus capable of artificially suppressing ICAP prices regardless of their size and, therefore, must be subject to Offer Floor mitigation. Thus, IPPNY fully supports the NYISO's proposal to restore to the Services Tariff the Category III language clarifying the NYISO must apply the BSM Rules to determine exemptions and Offer Floors for Generators that are not required to satisfy a deliverability requirement.

During the stakeholder process, certain parties asserted that the NYISO could not include this revision in its Order No. 841 compliance filing because it was beyond the scope of the NYISO's compliance obligation in this proceeding. The NYISO fully reviewed this position and ultimately rejected it as should the Commission if it is raised in this proceeding. As the NYISO stated in its December Filing, it is appropriate and consistent with Commission precedent that the BSM Rules apply to all Generators to ensure consistent and equitable treatment across all generation types.²³

III. CONCLUSION

As discussed above, the Commission should accept the NYISO's BSM Rules Proposal.

Respectfully submitted,

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²³ December Filing at 51 (citing *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh 'g*, 127 FERC ¶ 61,042 (2009)).

CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

David B. Johnson
David B. Johnson

Dated: February 7, 2019