

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

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

**MOTION TO INTERVENE OUT-OF-TIME, REQUEST FOR LEAVE TO ANSWER,
AND LIMITED ANSWER OF THE NYISO MARKET MONITORING UNIT**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 214 (2018), Potomac Economics respectfully moves to intervene in the above-captioned docket in which the New York Independent System Operator, Inc has filed to modify its tariffs in compliance with the requirements of Order No. 841, *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, including tariff provisions to adapt its existing Buyer Side Market Power Mitigation Measures to Energy Storage Resources (“ESRs”).¹

Potomac Economics is the Market Monitoring Unit (“MMU”) for the New York Independent System Operator, Inc. (“NYISO”). In this role, Potomac Economics is responsible for monitoring and evaluating the performance of the NYISO’s energy, ancillary services, and

¹ See *New York Independent System Operator, Inc.; Compliance Filing and Request for Extension of Time of Effective Date*, Docket No. ER19-467-000 (December 3, 2018) (“the NYISO Filing”), pages 51-54.

capacity markets. We also are responsible for recommending market design changes to improve the performance and competitiveness of the markets and evaluating design changes proposed by NYISO or market participants, which gives Potomac Economics a direct interest in this proceeding that cannot be adequately represented by any other party.

I. NOTICE AND COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:

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II. MOTION TO INTERVENE OUT OF TIME

Good cause also exists to permit Potomac Economics' motion to intervene out of time as it has a significant interest in this proceeding.² Permitting Potomac Economics to intervene at this time will not prejudice any party in the proceeding as the Commission has not yet acted on the filings. Potomac Economics agrees to accept the record in this case as developed to date. For these reasons, Potomac Economics respectfully requests that the Commission grant this motion for leave to intervene out of time in this proceeding.

III. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to accept answers to pleadings styled as answers and has consistently done so when, as here, the responsive pleading helps to clarify complex issues, provides additional information, or is otherwise helpful in the development of the record in a

² See, e.g., 18 C.F.R. § 385.214(d) (2007) (requirements for motion for late intervention); *Consolidated Gas Supply Corp.*, 20 FERC ¶ 61,305, at 61,599 (1992) (factors considered by Commission in determining whether good cause exists to permit late intervention).

proceeding and the decision-making process.³ The Commission should exercise its discretion to accept this limited answer because it helps to clarify important issues in this proceeding.

IV. ANSWER

This answer discusses our support for two elements of the NYISO Filing that were protested by intervenors. First, we support the NYISO's proposal to apply the existing Buyer-Side Mitigation ("BSM") measures in a non-discriminatory manner to ESRs, as it does with other generating capacity. As discussed herein, a special exemption to ESRs that is not provided to other generating resources is not warranted. Second, we support the NYISO's proposal to reinstate tariff language that provides a path for generating resources (including ESRs) that are smaller than 2 MW to be exempted from Buyer-Side Mitigation under the same tests that are applied to all other generating resources. Otherwise, ESRs and other generating resources smaller than 2 MWs would be mitigated automatically, regardless of whether they are deemed economic under the BSM exemption tests.

A. Support NYISO Proposal to Apply BSM Measures

We support the NYISO's proposal to apply the BSM measures to ESRs in the same manner as it does for the vast majority of generating resources in localities where mitigation is applicable. The BSM measures are designed to ensure that out-of-market support for individual resources does not undermine the fundamental purpose of the capacity market, which is to

³ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

provide price signals that incent new entry and retirements as necessary to satisfy the NYISO's planning reliability standards efficiently. In the coming years, a large share of the new entry could come from ESRs, so it is reasonable to treat ESRs like other generating resources for purposes of the buyer-side mitigation.

Some protests argue that ESR owners, whose portfolios are typically smaller than those of conventional generators, have no incentive to suppress capacity prices below competitive levels, but this is not relevant to whether the BSM measures should be applied to such resources. Ultimately, the need for BSM measures is driven not by the size of individual generating projects or portfolios, but by the aggregate amount of generating capacity that receives out-of-market subsidies. For example, the effects of one hundred individual 5 MW projects entering the market is no different from one 500 MW generator entering the market. Accordingly, the existing BSM measures do not consider the size of the portfolio of new entrant or the size of the new resource.

Additionally, there is no reason to expect that ESRs will need preferential treatment under the BSM measures, since it is widely recognized that the cost of new entry for these resources is falling rapidly.⁴ We would expect many ESRs to be exempted from buyer side mitigation because they satisfy one of the following three BSM tests:⁵

- Part A Test – This exempts resources when the surplus capacity margin in a local capacity zone drops below 6 percent in Zone J or 5 percent for the G-J Locality. Over the next decade, the NYISO is anticipating 3.7 GW of public policy-related retirements of existing resources in these areas, which would enable many new ESRs to pass this test.⁶

⁴ See *New York State Energy Storage Roadmap and Department of Public Service / New York State Energy Research and Development Authority Staff Recommendations: Appendix*, page 64 "Net CONE: Battery vs. Conventional Unit", filed on June 21, 2018 in Case 18-E-0130.

⁵ See NYISO MST § 23.4.5.7.2.

⁶ This includes the summer CRIS of the Indian Point units and peaking units that would be affected by the NYDEC's forthcoming Peaker Rule.

- Part B Test – This exempts projects that are expected to be economic based on a forecast of wholesale market prices. In our most recent State of the Market Report, we performed an analysis of incentives for new investment in New York City, and we found that the incentives for new entry of battery storage resources were similar to those of a combined cycle generator.⁷ Given that the cost of storage is anticipated to fall, it seems likely that many projects would pass this test.
- The Competitive Entry Exemption – This exempts projects that agree not to accept out-of-market subsidies. Since battery storage costs are following, it is likely that some projects will utilize this option for selling capacity.

B. Support NYISO Proposal to Reinstate BSM Rules for Projects Under 2 MW

We support the NYISO’s proposal to fill the gap in the BSM measures for projects under 2 MW by reinstating provisions that previously existed for small generators. If these rules are not reinstated as the NYISO proposes, resources under 2 MW will be mitigated automatically without any way to receive a legitimate exemption under the tests described above. Automatically mitigating these small resources would be discriminatory and unreasonable.

Some protests have asserted that the deletion of provisions for resources under 2 MW had the effect of exempting all such units from possibly being mitigated, but this interpretation ignores how the BSM measures are organized in the Market Services Tariff. The first sentence of the BSM measures begins: “Unless exempt as specified below, offers to supply Unforced Capacity from a Mitigated Capacity Zone Installed Capacity Supplier: (i) shall equal or exceed the applicable Offer Floor...”⁸ Thus, suppliers are to be mitigated (i.e., have an Offer Floor imposed) unless they satisfy specific criteria later in the section. Hence, the deletion of the provision for 2 MW resources eliminates the opportunity for an exemption (rather than the possibility of mitigation). We believe this is a flaw and support NYISO’s proposal to remedy it.

⁷ See 2017 SOM Report, Section VIII.C.

⁸ See first sentence of NYISO MST § 23.4.5.7.

V. **CONCLUSION**

WHEREFORE, for the foregoing reasons, Potomac Economics, Ltd. respectfully requests the Commission to grant its motion to intervene in this proceeding, grant it leave to answer, and accept this limited answer.

As discussed in this Answer, we support the NYISO's proposals to subject ESRs to the BSM measures in the same manner as other supply resources and the reinstate tariff language that would enable ESRs below 2 MW to be evaluated for an exemption from buyer side mitigation in the same manner as other supply resources. Therefore, we respectfully recommend that the Commission accept the NYISO proposed tariff modifications.

Respectfully submitted,

/s/ David B. Patton

David Patton
President
Potomac Economics, Ltd.

February 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 25th day of February, 2019 in Fairfax, VA.

/s/ David B. Patton
