

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

New York Independent System Operator, Inc.) Docket No. ER19-467-001

COMMENTS OF THE NYISO MARKET MONITORING UNIT

The NYISO submitted a compliance filing on December 3, 2018 in response to Order No. 841.¹ On February 25, we filed an answer discussing our support for elements of the NYISO Filing that were protested by intervenors.² On April 1, the Commission issued a deficiency letter in the same docket containing questions for the NYISO about various aspects of its compliance filing. Question 6(b) asked the NYISO to provide its interpretation of one of the NYISO's currently effective tariff provisions related to buyer-side mitigation. This filing provides our interpretation of the provision and how it disagrees with the NYISO's response.

I. NOTICE AND COMMUNICATIONS

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

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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).

² See *Request to Intervene Out-of-Time, Request for Leave to Answer, and Limited Answer of the NYISO Market Monitoring Unit*, Docket No. ER19-467-000 at 4 (Feb 25, 2019).

II. COMMENTS

After the NYISO submitted its compliance filing on December 3, 2018, we filed an answer on February 25 discussing our support for two elements of the NYISO Filing that were protested by intervenors. First, we supported 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. Second, we supported 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.

In the Commission's April 1 letter, Question 6(b) was: *Please explain whether, under NYISO's current buyer side mitigation rules, a resource 2 MW or less is subject to mitigation and, if so, whether it can avoid mitigation after passing one of these three buyer side mitigation tests. Or, absent NYISO's proposal, would an Energy Storage Resource 2 MW or less be subject to mitigation automatically because it does not qualify for an exemption? Does NYISO anticipate that most Energy Storage Resources 2 MW or less will receive exemptions under NYISO's proposal to include them in its BSM rules?*

The NYISO's May 1 response stated that: "A resource 2 MW or less is not subject to mitigation under the NYISO's currently effective BSM Rules." However, this interpretation is inconsistent with the plain language of the NYISO Market Services Tariff. The NYISO essentially concedes this fact on page 25 of its May 1 Filing and cites the relevant tariff provision, which is the first sentence of the BSM measures. This provision 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...”³ The NYISO acknowledges that the provision that previously allowed resources under 2 MW to obtain an exemption was erroneously deleted in a previous filing.⁴ However, the NYISO goes on to say that the words “Unless exempt as specified below” could not mean what they clearly mean because it would lead to automatic mitigation of resources under 2 MW, and this would be unreasonable and inconsistent with Commission policy.

We agree that it would not be just and reasonable to automatically mitigate ESRs under 2 MW, but this problem cannot be fixed by adopting an alternative interpretation of the unambiguous provisions in the NYISO’s currently effective tariff simply because they are deemed to be unjust or unreasonable. Rather, we believe that it is important to remedy this issue by amending the tariff to provide a path for small resources to obtain an exemption in a way that is comparable to other resources. The most straightforward way to do this would be to reinstate the provision regarding “Category III” resources as the NYISO proposes.

III. CONCLUSION

As discussed in this filing, 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 is

³ See first sentence of NYISO MST § 23.4.5.7. The overall structure of the BSM measures (a) begins saying that all resources are mitigated unless they have one of the exemptions listed later in the section and (b) provides a list of exemptions. The deletion of the exemption for “Category III” resources had the effect of removing any possible way for resource under 2 MW to obtain an exemption.

⁴ See page 22 of the NYISO’s May 1 filing.

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.

May 22, 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 22nd day of May, 2019 in Fairfax, VA.

/s/ David B. Patton
