

140 FERC ¶ 61,093
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 31, 2012

In Reply Refer To:
Demand Response Partners, Inc.
Docket No. ER12-2212-000

Demand Response Partners, Inc.
Attention: Andrew W. Dorn, IV, President
360 Delaware Ave.,
Suite 406
Buffalo, NY 14202

Dear Mr. Dorn:

1. On July 6, 2012, Demand Response Partners, Inc. (DRP) filed a request for a limited waiver of section 5.12.11.1.2 of the New York Independent System Operator, Inc.'s (NYISO) Market Administration and Control Area Services Tariff (Services Tariff) and section 4.12.4.2 of the Installed Capacity Manual (ICAP Manual) to allow NYISO to verify the Provisional Average Coincident Load (ACL) of certain customers in order to correctly measure the actual load reductions performed by these customers during the July 2011 emergency events. As discussed below, we grant limited waiver of the deadline set forth in section 5.12.11.1.2 of the Services Tariff.¹

Background

2. The NYISO Services Tariff was amended by a Commission order issued on April 11, 2011² to provide new performance and measurement standards for Special Case

¹ Waiver of the ICAP Manual is not required because, unless otherwise specified, the provisions of Manuals are not incorporated into the Services Tariff and, therefore, are not enforceable by this Commission.

² *New York Indep. Sys. Operator, Inc.*, 135 FERC ¶ 61,020 (2011); *see also New York Indep. Sys. Operator, Inc.*, Docket No. ER11-2906-001 (May 31, 2011) (delegated letter order).

Resources (SCR) that participate in the NYISO capacity market, and for the responsible interface parties that aggregate SCRs. The provisions apply new performance factor calculations to individual SCRs and responsible interface parties, and performance deficiency payments to responsible interface parties.

3. Under these new provisions, to determine the amount of load reduction available from SCRs, SCR baselines are calculated using the ACL methodology. Section 5.12.11.1.2 of the Services Tariff provides that new SCRs submit provisional estimates of their ACL because they do not have historical metered data to determine their actual ACLs. It is the responsible interface party's responsibility to provide NYISO with the Provisional ACL. Further, section 5.12.11.1.2 of the Services Tariff requires responsible interface parties to provide NYISO with the actual ACL for any SCR previously enrolled with a provisional ACL in the preceding capability period. If the responsible interface party fails to do so by a deadline, the ACL of such resource will be set to zero and the responsible interface party may be subject to deficiency penalties. Section 5.12.11.1.2 also provides that NYISO will compare the Provisional ACL to the actual ACL to determine, after applying the applicable performance factor, whether the SCR oversold capacity. If the SCR was oversold, that is deemed a shortfall, and the responsible interface party would be subject to a shortfall charge.

DRP's Filing

4. DRP states that it is a responsible interface party in NYISO's demand response markets including the SCR program. DRP states that modification to NYISO's procedures and the Demand Response Information System (DRIS) were instituted throughout the Summer 2011 Capability Period, followed by an open period for data submission for Provisional ACL verification that was set to end November 18, 2011. DRP states that it submitted the data for Summer 2011, and received error messages. DRP explains that it was not able to resolve the Provisional ACL verification until 5:04 PM EST on the deadline date, thereby missing the deadline by four minutes.³ DRP further states that, in accordance with NYISO procedures, the eight affected customers were assigned an ACL of zero and a performance factor of zero percent for Summer 2011. DRP states that it has worked through the appropriate appeals procedures with NYISO's Dispute and Claims Committee to resolve the matter but its latest attempt ended on May 24, 2012 with the Dispute and Claims Committee decision that no prior FERC actions or limited waivers concerning the Summer 2011 ACL transition could be

³ See November 18, 2011 SCR Deadline for Market Participants to Import Summer 2011 ACL Verification Data on NYISO's Installed Capacity Events Schedule. http://icap.nyiso.com/ucap/public/evt_calendar_display.do.

applied to this case. Accordingly, DRP here requests a limited waiver by the Commission of section 5.12.11.1.2 of the Services Tariff, i.e., the Provisional ACL verification for the Summer 2011 Capability Period, specifically for SCRs whose data was submitted in a timely fashion, such that these customers may henceforth have their performance factors adjusted in order to reflect actual historical performance.

5. DRP argues that a concrete problem exists in that the inability to get a limited waiver will result in the affected end-use customers receiving a severely reduced market incentive to perform during future emergency events, and in some cases being entirely restricted from providing SCR emergency capacity in the near future. DRP notes that failure to grant this waiver would result in the eight affected end-use customers retaining a performance factor which is not reflective of actual performance during the Summer 2011 emergency events on July 21 and July 22. According to DRP, these end-use customers' zero percent performance factor means zero capacity was able to be enrolled in the Summer 2012 Capability Period and zero financial incentive for the SCRs to perform during any emergency event which may occur during the Summer 2012 Capability Period.

6. DRP argues that the underlying errors were made in good faith, that it has historically submitted data requirements to NYISO in a timely manner, and has been a consistent provider of SCR emergency capacity. It adds that the transition to the ACL baseline for Summer 2011 has resulted in confusion for the responsible interface parties participating in the SCR program.

7. DRP also argues that its request for waiver is of limited scope in that DRP only seeks waiver of section 5.12.11.1.2 and the corresponding section of the ICAP manual with respect to a specific situation where a good faith attempt at timely data submission was made. DRP asserts that granting waiver will not have undesirable consequences. DRP states that NYISO has informed it that, if the Commission were to grant a waiver, NYISO would be able to restore appropriate incentives for the end-use customer capacity in accordance with the ICAP market rules.

Notice and Responsive Pleadings

8. Notice of DRP's Filing was published in the *Federal Register*, 77 Fed. Reg. 41,397 (2012), with protests and interventions due on or before July 27, 2012. By notice of July 12, 2012, the comment period was shortened to and including July 16, 2012. On July 27, 2012, NYISO filed a motion to intervene out of time and clarifying comments, and DRP filed a response to NYISO's comments.

9. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant NYISO's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of

Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012) prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept DRP's answer because it has provided information that assisted us in our decision-making process.

10. NYISO notes that DRP, in its waiver request, mistakenly confuses the one-time ex post facto ACL data reporting period, which was held only for the Summer 2011 Capability Period and closed on November 18, 2011, with the required Provisional ACL data reporting period that ran from January 23, 2012 through February 10, 2012. NYISO states that it held several DRIS training sessions to further instruct Responsible Interface Parties of the new ACL data reporting requirements, including those related to Provisional ACLs. NYISO states that DRP began its first attempt to import this Provisional ACL data with less than 90 minutes remaining on February 10, 2012. NYISO asserts that DRP had selected the wrong worksheet and therefore it was not able to properly import the Provisional ACL data. NYISO adds that its staff was first made aware that DRP had an issue with its Provisional ACL data reporting with less than an hour left in the reporting period and worked with DRP to identify and resolve their mistake. NYISO states that DRP was not able to make the necessary corrections and upload the data prior to the 5:00 p.m. deadline.⁴

11. NYISO does not oppose DRP's request for waiver. However, NYISO states that implementation of any relief granted by the Commission will require NYISO to redo calculations associated with the eight resources in question. NYISO estimates that its staff will need one week to implement changes if the Commission grants the requested waiver and this work would need to be completed at least two days prior the August 9, 2012 close of enrollment for September.

12. DRP responds that if the existence of NYISO's DRIS training sessions is adequate grounds for rejection of requests for waiver, then all requests for limited waiver of the ACL and Provisional ACL would be subject to rejection.

Discussion

13. The Commission has previously granted limited waivers of tariff provisions when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable

⁴ See February 10, 2012 SCR deadline for Responsible Interface Parties to import supporting data for Provisional ACLs used in Summer 2011 in DRIS on NYISO's Installed Capacity Events Schedule.
http://icap.nyiso.com/ucap/public/evt_calendar_display.do.

consequences, such as harming third parties.⁵ We find that DRP has demonstrated good cause to grant limited tariff waiver because its requested waiver satisfies the aforementioned conditions.

14. First, we find that DRP has acted in good faith, and we have no reason to believe that the error was intentional. DRP explains that it submitted its verification data only four minutes past the deadline.

15. Second, the requested waiver is of limited scope. The waiver applies only to the deadline set forth in section 5.12.11.1.2 and only to a small number of the SCRs that were resources in the ICAP market for the Summer 2011 Capability Period. This waiver allows the affected resources to re-submit only their Summer 2011 Capability Period verification data prior to NYISO's upcoming September 2012 ICAP Spot Auction. We find that the waiver reflects the specific and unique facts presented here and does not constitute precedent that would allow market participants to avoid these or any other requirements set forth in the Services Tariff.

16. Third, the waiver will remedy a concrete problem. Absent waiver, the eight SCRs in question would have a performance factor for the next auction that failed to accurately reflect performance, as measured by their capability to reduce load when called upon by NYISO.

17. Fourth, we find that granting the waiver will not lead to undesirable consequences. We find that no harm would result from the waiver because granting this waiver merely corrects what would otherwise be a market distortion as the affected resources participated in the ICAP market and were called on for ICAP/SCR reliability-related events during the Summer 2011 Capability Period. Further, no protests of the waiver request were filed.

⁵ See, e.g., *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *PJM Interconnection, LLC*, 137 FERC ¶ 61,109, at P 11 (2011); *PJM Interconnection, LLC*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO-NE*, 134 FERC ¶ 61,182, at P 8 (2011); *CAISO*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at PP 9-10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

18. For the foregoing reasons, the Commission grants DRP's request for limited waiver of the deadline set forth in section 5.12.11.1.2 of the Services Tariff.

By direction of the Commission.

Kimberly D. Bose,
Secretary.