

145 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

New York Independent System Operator, Inc.

Docket No. ER14-39-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

(Issued December 4, 2013)

1. On October 4, 2013, New York Independent System Operator, Inc. (NYISO) submitted revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to enhance its Special Case Resource (SCR) installed capacity market demand response program.¹ NYISO seeks waiver of the Commission's maximum 120-day notice requirement² to permit an effective date of March 15, 2014. The Commission grants waiver and accepts the proposed revisions, effective March 15, 2014, as requested, subject to condition.

I. Background

2. The NYISO capacity market allows Responsible Interface Parties to become capacity suppliers by enrolling demand side resources—also known as SCRs—in its capacity program. The determination of the maximum amount of demand reduction capability that may be enrolled in the capacity market is based on the SCR's Average Coincident Load (ACL). Under NYISO's existing tariff rules, the ACL for an SCR is

¹ New York Independent System Operator, Inc., FERC FPA Electric Tariff, NYISO Tariffs, NYISO MST §§ 2.1 MST Definitions - A, 2.3 MST Definitions - C, 2.4 MST Definitions - D, 2.9 MST Definitions - I, 2.13 MST Definitions - M, 2.14 MST Definitions - N, 2.16 MST Definitions - P, 2.17 MST Definitions - Q, 2.18 MST Definitions - R, 2.19 MST Definitions - S, 2.22 MST Definitions - V, 5.12 MST Requirements Applicable to Installed Capacity Suppliers, 5.14 MST Installed Capacity Spot Market Auction and Installed Capacity Supplier Deficiencies.

² 18 C.F.R. § 35.3 (2013).

calculated using the top 20 hours of the SCR's metered load that are coincident with SCR Load Zone Peak Hours—the top forty hours of New York Control Area peak load falling between 1:00 p.m. and 7:00 p.m. during the Prior Equivalent Capability Period.³ When calculating the ACL for an SCR that participates in a Transmission Owner's demand response program in hours coincident with any of the SCR Load Zone Peak Hours, the SCR's metered load for those hours is adjusted upward to include its verified load reduction in the Transmission Owner's Program. NYISO states that this adjustment is made so the SCR's load better represents its maximum demand reduction capability.⁴

3. Under NYISO's existing tariff rules, a Responsible Interface Party may enroll a new SCR with a Provisional ACL if the SCR has not previously been enrolled with NYISO and never had interval metering data. The Provisional ACL is the Responsible Interface Party's estimate of the SCR's peak load for the Capability Period⁵ that is used until a final ACL is determined. A Responsible Interface Party that enrolls an SCR with a Provisional ACL is required to submit metering data for the SCR following the Capability Period to allow NYISO to verify the accuracy of the Provisional ACL and calculate an ACL for the SCR. NYISO is dependent on the Responsible Interface Party to upload the SCR's meter data into NYISO's Demand Response Information System.

4. Further, under the existing tariff rules, when a Responsible Interface Party enrolls ineligible, unqualified, or unavailable capacity, it is subject to capacity shortfall penalties (shortfall penalties) pursuant to section 5.14.2 of the Tariff. The SCR program rules impose penalties upon the Responsible Interface Party based upon ACLs of individual SCRs enrolled by the Responsible Interface Party. For instance, a Responsible Interface Party must report when the ACL of an SCR decreases such that it no longer reflects the demand reduction capability of that resource—defined in the Services Tariff as an SCR Change of Load or an SCR Change of Status.⁶

³ NYISO revised its tariff in 2011 to calculate the baseline megawatt capability of SCRs based on their ACL. *See New York Indep. Sys. Operator, Inc.*, 135 FERC ¶ 61,020 (2011).

⁴ NYISO Filing at 3.

⁵ In this order, "Capability Period" generically refers to the Summer Capability Period from May through October and the Winter Capability Period from November through April.

⁶ An SCR Change of Load refers to a short-term degradation of demand reduction capability of more than seven and less than 60 continuous days whereas an SCR Change of Status is a long-term degradation of demand reduction capability of greater than 60 continuous days. NYISO Filing at 9.

II. NYISO's Filing

5. NYISO proposes to make two changes to the calculation of ACL for SCRs. First, if the SCR is enrolled in NYISO's economic demand response programs,⁷ NYISO proposes to adjust the SCR's metered load when calculating its ACL to account for verified load reduction under those programs in hours coincident with the SCR Load Zone Peak Hours. NYISO also proposes to expand the period from which Load Zone Peak Hours are measured from 11:00 a.m. to 8:00 p.m. NYISO states that increasing the period from which hours are selected will result in greater coincidence with New York Control Area peak load hours.⁸

6. NYISO also proposes to expand opportunities for a Responsible Interface Party to enroll an SCR with a Provisional ACL by adding the following: (1) an SCR has not previously been enrolled for the same Capability Period; (2) an SCR was previously enrolled but had insufficient meter data to calculate an ACL; or (3) a new Responsible Interface Party is enrolling the SCR and there is insufficient meter data in the Demand Response Information System to calculate an ACL.⁹ NYISO explains that these rule changes are necessary to avoid situations when the SCR is prevented from participating in the SCR program for up to twelve months if it elects to choose a different Responsible Interface Party.¹⁰

⁷ NYISO's economic demand response programs include the Day Ahead Demand Response Program and the Demand Side Ancillary Services Program.

⁸ NYISO Filing at 4.

⁹ NYISO also states that it will add a feature to the Demand Response Information System that allows a Responsible Interface Party to ascertain the eligibility of the SCR to be enrolled with a Provisional ACL, and, if it has the meter data required to enroll the SCR, NYISO will make that meter data available to the enrolling Responsible Interface Party. NYISO Filing at 5.

¹⁰ NYISO illustrates that currently if an SCR changes Responsible Interface Parties, the new Responsible Interface Party would not be able to use a Provisional ACL to enroll the SCR because the SCR is not new to the program. Additionally, the SCR may not have an ACL to use for enrollment if the prior Responsible Interface Party failed to provide NYISO with the SCR's data, that data was insufficient to calculate an ACL, or the necessary meter data was otherwise unavailable to the new Responsible Interface Party. NYISO Filing at 5.

7. In addition, NYISO proposes a new mechanism to allow a Responsible Interface Party to increase the ACL of a resource, subject to conditions, by using the Responsible Interface Party's estimate of the increase in SCR load. If an SCR has an ACL of at least 500 kW and increases its ACL by at least 30 percent, a Responsible Interface Party may enroll an SCR with an Incremental ACL up to a maximum of 100 percent of the SCR's ACL. A Responsible Interface Party that enrolls an SCR with an Incremental ACL will be required to report the interval meter data for the SCR following the Capability Period to allow NYISO to verify the Net ACL that includes the increase in the SCR's load.¹¹ As part of the development of the Incremental ACL, NYISO proposed a verification process and shortfall penalties.

8. NYISO also proposes to clarify certain circumstances that could result in an individual SCR having a capacity shortfall and the method by which NYISO will calculate the penalty for such shortfall and assess it to the relevant Responsible Interface Party.

9. NYISO requests that the Commission accept the proposed revisions effective March 15, 2014, and requests waiver of the Commission's maximum 120-day notice requirement.¹² NYISO asserts that good cause exists to waive this notice requirement to ensure that these proposed tariff revisions are all accepted and in place by the 2014 Summer Capability Period that begins on May 1, 2014. According to NYISO, the implementation of these tariff revisions requires significant preliminary work. NYISO adds that it expects to implement the relevant software deployment in March 2014 and, prior to deployment, needs to know the specific tariff revisions that have been accepted by the Commission to allow NYISO to develop and test the related software changes.

III. Notice of Filing and Responsive Pleadings

10. Notice of NYISO's Filing was published in the *Federal Register*, 78 Fed. Reg. 62,296 (2013), with interventions and protests due on or before October 25, 2013.

¹¹ NYISO proposes a new defined term, "Verified Average Coincident Load," to describe both (1) the ACL calculated by NYISO in accordance with section 5.12.11.1.2 of the Tariff to verify a Provisional ACL, and (2) the ACL calculated in accordance with section 5.12.11.1.5 of the Tariff to verify an Incremental ACL.

¹² 18 C.F.R. § 35.3 (2013).

11. Motions to intervene were filed by EnergyConnect, Inc., Energy Curtailment Specialists, Inc., Energy Spectrum, Inc., EnerNOC, Inc., Exelon Corporation, Multiple Intervenors,¹³ NRG Companies,¹⁴ New York Demand Response Coalition (DR Coalition),¹⁵ and New York Transmission Owners.¹⁶

12. The DR Coalition filed comments and a protest. On November 13, 2013, NYISO filed an answer. On November 26, 2013, the DR Coalition filed an answer to NYISO's answer. On November 27, 2013, NYISO filed an answer to the DR Coalition's filing.

A. Comments and Protest

13. The DR Coalition states that NYISO's revisions to the use of the Provisional ACL will provide greater opportunities for the enrollment of SCRs that change Responsible Interface Parties, and the introduction of an Incremental ACL will allow for a more timely reflection of increases in load.¹⁷

14. The DR Coalition, however, protests two aspects of NYISO's proposal. It argues that: (1) NYISO's proposal to impose penalties on an individual SCR that has temporarily or permanently ceased to exist and yet sold that capacity without declaring a Change of Status (i.e. reduction of total load) has not been shown to be just and reasonable; and (2) the methodology for determining whether an Incremental ACL is in excess of the Verified ACL should parallel that methodology for Provisional ACL.

¹³ Multiple Intervenors is an unincorporated association of over 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

¹⁴ NRG Companies consists of NRG Power Marketing LLC, GenOn Energy Management, LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, NRG Bowline LLC, Oswego Harbor Power LLC, and Energy Curtailment Services, Inc.

¹⁵ DR Coalition consists of EnergyConnect, Energy Curtailment Specialists, Inc., Innoventive Power, LLC, and Energy Spectrum.

¹⁶ New York Transmission Owners consists of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

¹⁷ DR Coalition Protest at 4.

15. Specifically, the DR Coalition argues against basing shortfall penalties to Responsible Interface Parties on an SCR-by-SCR basis. The DR Coalition adds that the exposure of individual SCRs to penalties based on individual SCR performance applies to all ACLs—existing, Provisional, and Incremental. The DR Coalition argues that NYISO should not apply penalties for Change of Status on an SCR-by-SCR basis. It states that these penalties are unnecessarily burdensome, that NYISO calls SCR events on a Zonal basis, and the subsequent reduction of load in that Zone by a Responsible Interface Party's SCRs should be all that needs to be considered.

16. In addition, the DR Coalition also protests NYISO's proposal to use different processes for verifying the accuracy of an Incremental ACL than NYISO's existing process for verifying the accuracy of a provisional ACL. It argues that the Verified ACL for an Incremental ACL will likely be lower than that for a Provisional ACL because it is confined to an average of two months of data rather than six months.¹⁸ The DR Coalition states that NYISO provides no justification for treating Incremental and Provisional ACLs differently, and argues that any shortfalls associated with an Incremental ACL should be based upon the actual ACL for the Capability Period as determined after the fact.

B. Answers

17. NYISO argues that the application of shortfall penalties on an SCR basis is just and reasonable and consistent with its current tariff requirements and practices. NYISO states that it assesses this penalty in response to a Responsible Interface Party that provides inaccurate information regarding an SCR's ability to sell capacity that it is not qualified to sell, and thus, it is necessary for the just and reasonable administration of the SCR program.¹⁹ Furthermore, NYISO states that it has historically assessed installed capacity shortfall penalties to Responsible Interface Parties on an individual SCR basis, and argues that the DR Coalition conflates the shortfall penalty with the Responsible Interface Party deficiency penalty by incorrectly arguing that NYISO assesses shortfall penalties on a Load Zone basis.

18. NYISO further argues that the assessment of shortfall penalties on an individual SCR basis is required to ensure reliability and avoid the overselling of capacity in NYISO's capacity markets.²⁰ NYISO contends that regardless of whether a Responsible Interface Party can draw on other SCRs to cover an SCR's underperformance during a

¹⁸ DR Coalition Protest at 11.

¹⁹ NYISO November 13, 2013 Answer at 6.

²⁰ NYISO November 13, 2013 Answer at 10.

specific demand response event, a Responsible Interface Party should not be enrolling resources that are unlikely to perform at their enrolled capacity.

19. With respect to the DR Coalition's second argument, NYISO states that Incremental ACL and Provisional ACL serve different purposes, and the different manner in which Verified ACLs are calculated with respect to each baseline reflects these differences.²¹ NYISO argues that if it were to verify Incremental ACL with the same methodology that it verifies Provisional ACL as the DR Coalition proposes, there could be situations where there are fewer SCR Load Zone Peak Hours remaining in the Capability Period than necessary to verify an Incremental ACL. Moreover, the Verified ACL could include data from months in which the SCR may not have been enrolled with an Incremental ACL and, thereby, result in a less accurate baseline.

20. The DR Coalition responds that no tariff basis exists for NYISO's assertion that it has historically assessed shortfall penalties to Responsible Interface Parties on an individual SCR basis and asserts that the tariff is, at best, unclear. DR Coalition also asserts that NYISO exaggerates the impact of individual SCR shortfalls on reliability, and that NYISO recognizes that the current method used to verify a Provisional ACL is flawed.²²

21. In its response, NYISO reiterates that it applies shortfall penalties to Responsible Interface Parties on an individual SCR basis and that the DR Coalition's argument erroneously relies on provisions in the Services Tariff that refer to the Responsible Interface Party deficiency penalty.²³ NYISO also denies the DR Coalition's contention that it admitted that the current methodology for verifying a Provisional ACL is flawed.²⁴

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also find good cause to grant the requested waiver of the Commission's maximum 120-day notice requirement.

²¹ NYISO November 13, 2013 Answer at 12.

²² DR Coalition November 26, 2013 Answer at 3.

²³ NYISO November 27, 2013 Answer at 3.

²⁴ *Id.* at 5.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

24. For the reasons discussed below, we find good cause to grant the waiver and accept the proposed revisions, effective March 15, 2014, as requested.

25. The Commission finds that NYISO's revisions offer a balanced approach that will encourage increased participation by SCRs in NYISO's demand response program. The revisions to the ACL computation methodology, creation of Incremental ACL, and expanded use of a Provisional ACL have the potential to increase the scope of participation by expanding the SCR Load Zone Peak Hour window by three hours, increase flexibility for SCRs to make enrollment changes, including mid-year increases in demand reduction capability, and promote accurate reporting.

26. With regard to the DR Coalition's argument that the proposed revisions represent an expansion of shortfall penalties from a zonal basis to an SCR-by-SCR basis, we agree with NYISO that the DR Coalition's arguments appear to confuse the shortfall penalty with the Responsible Interface Party deficiency penalty. It is the Commission's understanding that *shortfall* penalties are only assessed when a Responsible Interface Party enrolls an SCR with an ACL above its actual demand reduction capability. The Commission also understands ACL to be only calculated at the SCR level. As stated in its answer, NYISO currently assesses shortfall penalties for Responsible Interface Parties²⁵ on an individual SCR basis.²⁶ In contrast, it is our understanding that *deficiency* penalties are assessed based on a Responsibility Interface Party's response to an event during a Capability Period. NYISO's evaluation of ACL and assessment of shortfall penalties on an individual SCR basis do not preclude the dispatch of Responsible Interface Parties on an aggregate basis during a demand response event. For instance, if an SCR experiences a temporary degradation in load, a Responsible Interface Party can still meet its capacity obligation during an event by having other SCRs within the same zone respond in aggregate. As long as the Responsible Interface Party meets its capacity

²⁵ The Commission notes that the DR Coalition, in its protest, incorrectly suggests that shortfall penalties are imposed on individual SCRs. DR Coalition Protest at 6. As NYISO states in its answer, Responsible Interface Parties are responsible for paying shortfall penalties assessed on their enrolled SCRs. NYISO November 13, 2013 Answer at 6.

²⁶ NYISO November 13, 2013 Answer at 4.

obligation on an aggregate level, it will not be assessed a *deficiency* penalty. Thus, contrary to the DR Coalition's arguments, NYISO's proposal preserves the Responsible Interface Party's ability to aggregate SCR resources for purposes of performance evaluation during an event. However, we find that section 5.14.2 is unclear and, therefore, may conflict with NYISO's interpretation of how shortfall penalties and deficiency charges are to be assessed under that section in light of the proposed revisions. Accordingly, we will accept NYISO's filing subject to NYISO making conforming changes to section 5.14.2 to clearly reflect NYISO's new proposal with respect to shortfall penalties and deficiency charges. NYISO is directed to file such conforming changes within 30 days of this order.

27. In response to the DR Coalition's protest that NYISO's assessment of shortfall penalties for an unreported SCR Change in Status is overly burdensome, the Commission finds that NYISO's proposal narrowly defines when a Responsible Interface Party faces an obligation to report an SCR Change in Status. Responsible Interface Parties will only be required to report an SCR Change in Status for significant degradations in load that are not related to weather or seasonal variations.²⁷

28. NYISO explains that assessing shortfall penalties on an individual SCR basis helps to ensure reliability and to avoid overselling of capacity, because available capacity is determined from the bottom up, i.e., the sum of available capacity from individual SCRs in a Responsible Interface Party's aggregation of SCRs. We agree, and find that the proposed penalty revisions create a disincentive for Responsible Interface Parties to overestimate an SCR's demand reduction capability when enrolling it into the SCR Program. The concern is that an overestimation may allow the Responsible Interface Party to sell more capacity in advance of its obligation and then fail to deliver the expected capacity when the SCR is called upon in a demand response event.

29. We also find that the proposed tariff provisions ensure that NYISO has accurate information on the actual demand reduction capability of enrolled SCRs. With respect to evaluation of Provisional and Incremental ACLs, the purpose of these mechanisms is to inform NYISO of a discrete change in a Responsible Interface Party's SCR portfolio in the middle of a Capability Period. Since NYISO lacks data only with respect to these

²⁷ Special Case Resources with an applicable ACL *greater than or equal to 500 kW*, must report a reduction or increase in total load not attributable to fluctuations in load due to weather, that is equal to or greater than: (i) thirty percent of the applicable ACL for any month within the Capability Period; and (ii) ten MW if in Rest of State or Long Island Locality or five (5) MW in the NYC Locality; whichever is less. For SCRs that elect to enroll with an Incremental ACL and do not increase the eligible Installed Capacity associated with the SCR, the RIP may enroll the SCR with a lower percentage change to its total Load increase. Services Tariff § 2.19 (MST Definitions – S) (7.0.0).

changing SCR portfolios, it is reasonable for NYISO to verify such changes in ACL on an SCR-by-SCR basis and impose shortfall penalties on an equally granular basis (i.e., SCR-by-SCR).

30. The Commission also disagrees with the DR Coalition's claim that penalties based on individual SCR performance restrict entry—particularly for Provisional SCRs that have never been enrolled and do not have like-period metering data. Without NYISO's proposed revisions, Provisional SCRs that have never been enrolled and do not have like-period metering data would be required to wait longer than one Capability Period while the necessary data is gathered before they can be enrolled. NYISO's revisions to Provisional ACL will allow these resources to enroll while the data is being collected.

31. Finally, the Commission is not persuaded by the DR Coalition's argument that NYISO has not justified the different measures of Verified ACL for Incremental ACL as compared to Provisional ACL. The Commission finds that it is reasonable for Incremental and Provisional ACLs to be verified in different ways because they are estimates of different aspects of an SCR's ACL (i.e., total ACL versus an increase in ACL) and reflect an SCR's ACL for different periods of time (i.e., one Capability Period versus less than one Capability Period). Furthermore, there may be situations where it is impossible for NYISO to verify an SCR's Incremental ACL in the same manner as a Provisional ACL. As explained by NYISO, verification of Provisional ACL is based on the metered data from the highest 20 of the 40 SCR Load Zone Peak Hours for the Capability Period. If an SCR is not enrolled with an Incremental ACL until late in the Capability Period, there may not be enough of the 40 SCR Load Zone Peak Hours remaining in the Capability Period to verify the Incremental ACL. Therefore, the Commission finds NYISO's proposed revisions regarding the calculation of Verified ACL to be necessary in order to accommodate the introduction of Incremental ACL and changes to Provisional ACL.

The Commission orders:

NYISO's proposed Tariff revisions are hereby accepted, subject to condition, effective March 15, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.