

152 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

New York Power Authority

Docket No. ER15-1951-000

ORDER GRANTING WAIVER REQUEST

(Issued July 17, 2015)

1. On June 18, 2015, the New York Power Authority (NYPA) submitted a request for a limited waiver of section 5.12.11.1 of the New York Independent System Operator, Inc.'s (NYISO) Market Administration and Control Area Services Tariff (Services Tariff)¹ to allow for its late submission of Special Case Resource (SCR) performance data to NYISO for the March 3, 2015 SCR test. For the reasons discussed below, we grant NYPA's request for waiver of section 5.12.11.1 of NYISO's Services Tariff.²

I. Background

2. NYISO's installed capacity (ICAP) market design includes a provision for SCRs, defined as demand response resources and certain behind-the-meter generators,³ to sell capacity in NYISO's capacity auctions. SCRs are represented in the market by

¹ NYISO Services Tariff, §5.12.11.1 (11.0.0).

² NYPA also asks for waiver of corollary provisions in section 4.4.7.1 of NYISO's Installed Capacity Manual (ICAP Manual), but we need not address that request, because the ICAP Manual is not part of the Commission-approved Tariff.

³ Section 2.19 of the Services Tariff defines SCRs as "demand side resources whose load is capable of being interrupted upon demand at the direction of NYISO, and/or demand side resources that have a local generator, which is not visible to NYISO's Market Information System and is rated 100 kW or higher, that can be operated to reduce load from the New York State transmission system or the distribution system at the direction of NYISO." NYISO, Services Tariff, § 2.19 (19.0.0).

Responsible Interface Parties,⁴ which act as aggregators of individual SCRs to facilitate the SCR's participation in the program. Responsible Interface Parties that enroll qualified SCRs receive capacity payments in return for the commitment to reduce load when called upon by NYISO. NYPA is a Responsible Interface Party in NYISO's ICAP market.

3. NYISO activates the SCR program in response to the following events: (1) a forecasted reserves shortage; (2) a Major Emergency state declared by NYISO; or (3) a request for load relief purposes, or as the result of a local reliability rule. NYISO also activates SCRs for performance tests in each Capability Period, during which SCRs must demonstrate their ability to meet their capacity obligation. Although NYISO did not activate SCRs for any events in the Winter 2014/2015 Capability Period, NYISO conducted a performance test on March 3, 2015.

4. With regard to SCR performance tests, section 5.12.11.1 of the Services Tariff provides that:

Responsible Interface Parties that were requested to reduce Load in any month shall submit performance data to NYISO, within 75 days of each called event or test, in accordance with [NYISO] Procedures. Failure by a Responsible Interface Party to submit performance data for any Special Case Resources required to respond to the event or test within the 75-day limit will result in zero performance attributed to those Special Case Resources for purposes of satisfying the Special Case Resource's capacity obligation as well as for determining energy payments.⁵

Non-performance for an event or test impacts the unforced capacity the SCR is able to sell in the ICAP market and may result in ICAP shortfalls and related deficiency charges.

II. Request for Waiver

5. In its June 18, 2015 filing, NYPA explains that, in order to verify its approximately 110 MW of SCR capacity, it was required to submit SCR response data for the March 3, 2015 SCR test into NYISO's Demand Response Information System

⁴ Section 2.18 of the Services Tariff defines Responsible Interface Party as “[a] Customer that is authorized by NYISO to be the Installed Capacity Supplier for one or more Special Case Resources and that agrees to certain notification and other requirements in this Services Tariff and in the ISO Procedures.” NYISO, Services Tariff, § 2.18 (18.0.0).

⁵ NYISO, Services Tariff, § 5.12.11.1 (11.0.0).

(DRIS) by May 17, 2015. According to NYPA, it believed that it had correctly made this submission in a timely manner but, on June 5, 2015, it learned that NYISO had not received the required data.⁶ NYPA states that, as a result, NYPA's SCRs will be assigned performance factors of zero for the March 3, 2015 SCR test. In addition, since the March 3, 2015 SCR test was the only event in the Winter 2014/2015 Capability Period, and since there was only one hour-long test activation in the Summer 2014 Capability Period, these resources would be assigned a performance factor no higher than 0.5 for the Winter 2015/2016 and Summer 2016 Capability Periods.

6. After NYISO notified NYPA of its missed deadline, NYPA states that it promptly submitted electronically the correct SCR test performance data to NYISO. However, a tariff waiver is necessary for NYISO to use the submitted data in its performance factor calculations.⁷ Therefore, NYPA seeks a limited waiver of the May 17, 2015 deadline so that NYISO will recognize its SCR response data from the March 3, 2015 SCR test and thereby allow the data to be captured for the upcoming Capability Periods. NYPA requests expedited action on or before July 17, 2015, which is the date NYISO indicated that it needs to process the correct data to include it in the Winter 2015/2016 Capability Period performance factor calculations.⁸ NYPA notes that the provided data will also be included in the performance factor calculations for the Summer 2016 Capability Period.

7. NYPA states that, in determining whether to authorize a tariff waiver to alleviate the effects of an error, the Commission evaluates whether: (1) a concrete problem needs to be remedied; (2) the underlying error was made in good faith; (3) the waiver is of limited scope; and (4) the waiver will not have undesirable consequences, such as harming third parties.⁹ NYPA asserts that the instant case satisfies these criteria.

⁶ NYPA June 18, 2015 Filing at 3.

⁷ *Id.* at 3 n.1.

⁸ NYISO will finalize and publicize the results of its performance factor calculations by August 1, 2015.

⁹ NYPA June 18, 2015 Filing at 5 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067, at P 25 (2015); *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 19 (2014); *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *Demand Response Partners, Inc.*, 140 FERC ¶ 61,093, at P 13 (2012); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *N.Y. Power Auth.*, 139 FERC ¶ 61,157, at P 28 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *N.Y. Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,193, at P 67 (2011)).

8. First, NYPA contends that a concrete problem exists because not including NYPA's true SCR event response data in NYISO's calculations for the Winter 2015/2016 and Summer 2016 Capability Periods will lead to costly market impacts that will harm consumers. NYPA states that the total capacity of the affected resources in its SCR portfolio is approximately 110.7 MW. According to NYPA, absent a tariff waiver, the capacity of these SCRs cannot be sold to the full extent and, due to a changed cost/benefit analysis, the SCRs would likely not participate in the SCR program for the Winter 2015/2016 and Summer 2016 Capability Periods. NYPA asserts that, unless corrected, the diminished supply of SCRs will lead to lower capacity supply, and in turn, to increased capacity prices for New York consumers over the two Capability Periods. NYPA estimates that, absent a waiver, there will be an approximate monthly market impact (increased cost to consumers) of between \$2.8 and \$3.4 million, with a 12-month impact for the two Capability Periods of between \$34 and \$40 million.¹⁰

9. Second, NYPA explains that its underlying errors were made in good faith because it initially believed the SCR response data had been submitted to NYISO within the required reporting period. NYPA states that it subsequently learned that, even though the data was available for upload, the data was not timely submitted by NYPA or otherwise received by NYISO.¹¹ NYPA maintains that it has taken corrective actions, including the creation of internal automated alerts to ensure that its SCR reporting requirements are fully satisfied within the designated periods, and the creation of a records management system to ensure successful, timely imports into NYISO's DRIS. NYPA also states that it will discuss with NYISO staff possible suggestions so that NYPA can be made aware of any issues in its submission of SCR response data prior to the close of submission deadlines.¹²

10. Third, NYPA asserts that its waiver request is of limited scope because it is for the limited purpose of allowing NYISO to include in its calculations the SCR response data as provided by NYPA.¹³

11. Finally, NYPA contends that the waiver will not have any undesirable consequences. According to NYPA, granting the waiver request would not upset any settled expectations of the market or settled auctions because the ICAP auctions for the Winter 2015/2016 and Summer 2016 Capability Periods have not yet occurred.

¹⁰ NYPA June 18, 2015 Filing at 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 7.

Conversely, NYPA argues that, if its limited waiver request is denied, the anticipated derated capacity of the affected resources in NYPA's SCR portfolio would diminish these resources' likelihood of participating in the SCR program, and if these SCRs choose not to participate because of this derated capacity, the total loss of SCR capability (approximately 110 MW) could diminish the reliability benefits provided by the SCR program.¹⁴

III. Notice of Filing and Responsive Pleadings

12. Notice of NYPA's June 18, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 36,796 (2015) with comments, protests, and interventions due on or before June 29, 2015. Multiple Intervenors¹⁵ and NYISO filed motions to intervene and comments. The New York State Public Service Commission (New York Commission) filed a notice of intervention and comments. The New York State Department of State Utility Intervention Unit filed an out-of-time motion to intervene and comments.

13. Multiple Intervenors and the New York Commission support NYPA's waiver request.¹⁶ The New York Commission contends that NYPA has shown good cause to grant the limited waiver request, noting that the requested waiver satisfies the four factors the Commission identified previously in granting waiver requests.¹⁷ Specifically, the New York Commission submits that the waiver is needed to reflect NYPA's SCR resources in the ICAP market. Otherwise, consumers could be subject to artificial price increases of \$34 to \$40 million for the Winter 2015/2016 and Summer 2016 Capability Periods.¹⁸ The New York Commission further states that a waiver is needed to avoid a derating of NYPA's resources, which may diminish the likelihood that these resources will participate in the SCR program in the future.¹⁹ Multiple Intervenors contend that

¹⁴ *Id.*

¹⁵ Multiple Intervenors is an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State. Multiple Intervenors submitted combined comments in this proceeding with comments on a similar request for waiver filed in Docket No. ER15-1926-000 by Innoventive Power LLC.

¹⁶ Multiple Intervenors June 29, 2015 Comments at 4; New York Commission June 29, 2015 Comments at 2.

¹⁷ New York Commission June 29, 2015 Comments at 3 (citations omitted).

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 3.

derates would be particularly unjustified for SCRs that actually performed in response to the March 3, 2015 SCR test, especially in light of the considerable benefits such resources provide during extreme peak load events.²⁰ Moreover, Multiple Intervenors also add that the resulting deratings are especially severe in this particular case because the March 3, 2015 test was the only demonstration of performance that NYISO required for SCR participants during the Winter 2014/2015 Capability Period.²¹

14. The New York State Department of State Utility Intervention Unit also supports NYPA's waiver request given the potential price increase for New York State consumers of derating NYPA's SCRs.²² The New York State Department of State Utility Intervention Unit states that SCRs are a critical element to maintaining a reliable system by providing assurance that there is sufficient capacity available to address unexpected conditions, such as extreme weather and transmission line outages.²³ The New York State Department of State Utility Intervention Unit notes that, in January 2015, there were approximately 850 MW enrolled in the SCR program, compared to 1,235 MW enrolled in July 2015. The New York State Department of State Utility Intervention Unit contends that, if the same amount of capacity is enrolled during the Winter 2015/2016 Capability Period, the SCR enrollment could be reduced by 13 percent if the Commission denies NYPA's waiver request.²⁴ The New York State Department of State Utility Intervention Unit therefore argues that NYPA's SCRs are needed for reliability and asks that the Commission grant NYPA's waiver request.

15. In its comments, NYISO states that it does not oppose NYPA's waiver request. NYISO emphasizes that NYPA is solely responsible for submitting the data required under the NYISO Services Tariff. NYISO states that, although NYPA seems to imply that there was a technical issue with NYISO's DRIS, NYISO has discovered no indication that the DRIS suffered any malfunction that contributed to NYPA's failure to submit the required data or that the DRIS was not operating correctly during the 75-day submission period.²⁵ NYISO explains that the DRIS instantly provides notifications to

²⁰ Multiple Intervenors June 29, 2015 Comments at 5.

²¹ *Id.* at 4.

²² New York State Department of State Utility Intervention Unit July 7, 2015 Comments at 4.

²³ *Id.* at 5-6.

²⁴ *Id.* at 6.

²⁵ NYISO June 29, 2015 Comments at 5.

Responsible Interface Parties if data containing errors or omissions is uploaded to the DRIS. NYISO notes however, that the DRIS does not provide a Responsible Interface Party with notification that a file has not been uploaded to the system. NYISO adds that it is the Responsible Interface Parties' responsibility to ensure that the appropriate data has been timely uploaded, and that the 75-day submission period provides ample time for Responsible Interface Parties to fulfill their obligation to submit the data.²⁶ Further, NYISO recognizes NYPA's commitment to take corrective action to improve compliance with the submission deadlines moving forward, but notes that NYPA's commitment is warranted given that this is the second waiver request NYPA has submitted since 2012 for the same deadline.²⁷

16. NYISO expresses concern that a waiver in this proceeding may raise questions regarding the applicability of the data reporting requirements in future Capability Periods and as they apply to other Responsible Interface Parties, which, although administrative, are nonetheless necessary for certainty and transparency. However, NYISO states that the potential for an undesirable impact on the NYISO's capacity market if NYPA's SCRs were to stop participating in the SCR program (i.e., increased capacity costs), offsets NYISO's desire for strict adherence to the SCR data submission deadline.²⁸ NYISO states that it agrees with NYPA's estimate of the market impact of derating its SCRs and notes that this increase is due to the combined effect of two separate factors: (1) NYPA's failure to submit performance data for its entire SCR portfolio; and (2) there only being one hour of data on which to calculate SCR performance for the relevant Capability Periods.²⁹ NYISO states that the potential market impacts of the Commission denying NYPA's request would be particularly severe due to the specific facts and circumstances of this matter.

17. NYISO states that it has begun its preparation for the Winter 2015/2016 Capability Period, which includes reviewing data and completing the various calculations necessary from all SCRs. NYISO notes that, if NYPA had not promptly filed its request for waiver, granting such request could result in undesirable outcomes, such as recalculating resource

²⁶ *Id.* at 6.

²⁷ *Id.* at 5; *see also N.Y. Power Auth.*, 139 FERC ¶ 61,157 at PP 1, 34.

²⁸ NYISO notes that, if NYPA's SCRs were to remain in the market at a derated capacity, there is not likely to be a significant market impact. However, NYISO concedes that it has not received an indication as to whether the affected resources would remain in, or leave, the market. NYISO June 29, 2015 Comments at 7 n.13.

²⁹ NYISO June 29, 2015 Comments at 7.

performance factors.³⁰ NYISO also explains that, if the Commission grants the waiver request by July 17, 2015, NYISO will have sufficient time to process and review the data, complete all required calculations prior to the seasonal set-up for the Winter 2015/2016 Capability Period, and post-performance factors for the upcoming Capability Period by the August 1, 2015 deadline.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³¹ the timely, unopposed motions to intervene and the notice of intervention serve to make the entities that filed them parties to this proceeding.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,³² we will grant the New York State Department of State Utility Intervention Unit's late-filed motion to intervene given its interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

20. As discussed below, we grant NYPA's request for waiver of section 5.12.11.1 of NYISO's Services Tariff to allow NYISO to process the data that NYPA previously submitted.³³

21. 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 consequences, such as harming third parties.³⁴ NYPA's request for limited waiver of section 5.12.11.1 of the Services Tariff satisfies the aforementioned conditions.

³⁰ *Id.*

³¹ 18 C.F.R. § 385.214 (2014).

³² 18 C.F.R. § 385.214(d).

³³ NYPA June 18, 2015 Filing at 3 n.1.

³⁴ See, e.g., *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,109, at P 11 (2011); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at

22. First, we find that NYPA has acted in good faith as we have no reason to believe NYPA's failure to submit the SCR response data was anything but inadvertent. Also, as NYPA notes, after learning of the missed deadline, it promptly submitted the required data to NYISO and implemented internal corrective measures, including the creation of internal automated alerts and a records management system to ensure timely submissions in the future.

23. Second, we find that the requested waiver is of limited scope because it allows an extension of the deadline for NYISO to be able to process the data that NYPA previously submitted, which is related to only the March 3, 2015 SCR test and for only one Capability Period.

24. Third, the waiver will remedy a concrete problem. Absent the instant waiver, the capacity of NYPA's SCRs cannot be sold to their full extent and will result in an artificially diminished supply of SCR capacity that could distort market prices upward. Consequently, NYPA and commenters agree that capacity prices for New York consumers could increase over the Winter 2015/2016 and Summer 2016 Capability Periods by an estimated \$34 to \$40 million.

25. Fourth, we find that granting the waiver will not lead to undesirable consequences. We find that no harm will result from granting the waiver by July 17, 2015 because it would not upset any settled expectations, as NYISO has not yet published any performance factors and has not yet conducted an auction that uses them. We further note that no party opposes NYPA's waiver request.

26. We stress that this is a limited waiver based on the specific circumstances here and that, as a general matter, market participants are required to abide by tariff deadlines to ensure certainty and transparency. As NYISO emphasizes in its comments, the importance of complying with tariff rules and deadlines in order to effectively administer NYISO's ICAP market cannot be overstated.

27. Accordingly, for the foregoing reasons, we grant NYPA's request for a limited waiver of section 5.12.11.1 of NYISO's Services Tariff to allow NYISO to process the data NYPA previously submitted.

P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 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.*, 122 FERC ¶ 61,297, at P 13 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225, at P 28 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007, at P 31 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045, at P 14 (2008).

The Commission orders:

NYPA's request for waiver of section 5.12.11.1 of NYISO's Services Tariff is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.