

153 FERC ¶ 61,260
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 1, 2015

In Reply Refer To:
Galt Power, Inc.
Docket No. ER15-2750-000

Galt Power, Inc.
1528 Walnut St, Floor 21
Philadelphia, PA 19102

Attention: Ian Sneed

Customized Energy Solutions
1528 Walnut St, Floor 22
Philadelphia, PA 19102

Attention: Ariel C. Lager, Esq.

Dear Mr. Sneed and Ms. Lager:

1. On September 30, 2015, Galt Power, Inc. (Galt) submitted 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)¹ to allow for relief from the monetary penalty NYISO imposed on Galt for its failure to timely provide verification data from an August 2014 performance test. Galt later clarified that it requests waiver of the relevant penalty provision contained in section 5.14.2.3.1 of the Services Tariff, to provide relief from the assessed penalty; we grant the latter waiver for good cause shown.

¹ NYISO, Services Tariff, § 5.12.11.1 (11.0.0). Galt also requests waiver of corollary provisions in section 4.12.4.2 of NYISO's Installed Capacity Manual (ICAP Manual), but the Commission need not address that request because the ICAP Manual is not part of the Commission-approved tariff.

2. NYISO's installed capacity (ICAP) market design includes a provision for Special Case Resources (SCR), defined as demand response resources and certain behind-the-meter generators,² to sell capacity in NYISO's capacity auctions. SCRs are represented in the market by Responsible Interface Parties, which act as aggregators of individual SCRs to facilitate their participation in the program.³ Responsible Interface Parties that enroll qualified SCRs receive capacity payments in return for the commitment to reduce load when called upon by NYISO. Galt is a Responsible Interface Party participating in NYISO's ICAP market since 2014.

3. NYISO conducts periodic performance tests, during which each SCR must demonstrate its ability to meet its capacity obligation. Section 5.12.11.1 of the Services Tariff provides that Responsible Interface Parties must provide to NYISO event and performance test data that occurred in any month within 75 days of each called event or test through NYISO's Demand Response Information System. Failure to report performance data within the 75-day period will result in NYISO assigning zero performance for that event or test. 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 payments.

4. Galt explains that it enrolled four resources for the Summer 2014 capability period and appropriately provided performance test data but failed to supply verification data by the required January 14, 2015 deadline.⁴ Galt notes that, although its customers performed as required during the performance period, Galt failed to submit the verification data by the deadline due to an administrative oversight and takes full responsibility for its failure. Galt explains that it became aware of its oversight when it received a notice in March 2015 from NYISO. Galt further states that it received two penalty letters dated May 26, 2015 from NYISO totaling \$342,903 in penalties for ICAP shortfalls stemming from Galt's failure to submit the required verification data. Galt claims that, upon receiving the penalty letters, it immediately contacted NYISO to explain its inadvertent oversight and rectified the problem within thirteen days.⁵

² NYISO, Services Tariff, § 2.19 (19.0.0).

³ Responsible Interface Party is "[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).

⁴ Galt Waiver Request at 3.

⁵ *Id.* at 4-5.

5. Galt states that it requests a limited waiver of section 5.12.11.1.2 of the Services Tariff to allow relief from the imposition of the penalty fee.⁶ Galt asserts that the Commission has previously granted limited waivers in similar instances 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.

6. First, Galt argues that the underlying error was made in good faith and was an isolated failure in internal controls that was addressed when it was discovered. Galt asserts that it collected and processed the relevant data well in advance of the submission deadline and participated as expected, but it submitted the verification data late as the result of an unfortunate oversight. Galt states that, subsequently, it has implemented internal corrective measures to ensure this mistake is not repeated, including the assignment of appropriate personnel and the creation of additional oversight to Galt's scheduling functions.⁷

7. Second, Galt asserts that the requested waiver is limited in scope because Galt is not seeking to avoid any portion of the substantive requirements to respond to a data request. Galt argues that the waiver is limited to its few customers with no impacts anticipated to other market participants or the larger market.⁸ Galt states that it does not request a retroactive resettlement of performance factors, which further reduce any implications to NYISO and other market participants.⁹ Galt asserts that the Commission has previously granted limited waivers to Responsible Interface Parties that have submitted SCR data beyond the time period extension sought by Galt.¹⁰

⁶ While Galt originally requests waiver of section 5.12.11.1.2, it subsequently clarifies in its answer to NYISO's comments that Galt is seeking relief solely from the assessed penalty pursuant to section 5.14.2.3.1 of the Services Tariff. *See infra* P 15.

⁷ Galt Waiver Request at 6.

⁸ *Id.*

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 7-8 (citing *N.Y. Power Auth.*, 139 FERC ¶ 61,157, at P 6 (2012) (2012 NYPA) (noting that the Commission granted a limited waiver to several Responsible Interface Parties that failed to submit timely SCR performance data for the 2011 capability period nearly six months after the deadline); *Demand Response Partners, Inc.*, 140 FERC ¶ 61,093 (2012) (noting that the Commission, in granting the requested waiver, found that the waiver applied only to the deadline in a discrete portion of the

(continued...)

8. Third, Galt argues that the requested waiver remedies a concrete problem. Galt asserts that, absent a waiver, it would be assessed deficiency charges in addition to its resources being assigned zero performance, despite that its resources performed when requested.¹¹ Galt also notes that derating Galt's resources has resulted in an approximate 50 percent reduction in the amount of capacity that can be provided by the affected resources during the Summer 2015 and Winter 2015/16 capability periods.¹² Galt argues that the deficiency charge of \$342,903 is greater than the total value of participation during the performance period. Galt explains that it is not requesting that its capacity performance be adjusted; instead, it argues, the penalty constitutes an excessive response to an inadvertent delay in providing the requisite data. Galt states that, aside from being penalized, it is now in the position of having to pay customers for load reductions that were performed but for which Galt was not paid. Galt further claims that, due to what it considers a significant penalty, Galt will be forced to discontinue its participation as a Responsible Interface Party in NYISO.¹³

9. Finally, Galt contends that granting a limited waiver of the penalty in this case would not lead to undesirable consequences but would simply correct a market distortion. Galt argues that the Commission granted a similar waiver to the New York Power Authority allowing for relief from a penalty also caused by an inadvertent administrative oversight.¹⁴

10. Notice of Galt's waiver request was published in the *Federal Register*, 80 Fed. Reg. 60,665 (2015), with interventions and protests due on or before October 21, 2015. On October 21, 2015, NYISO filed a motion to intervene and comments. On November 5, 2015, Galt filed an answer.

tariff and the waiver would allow the re-submission of verification data related only to one specific capability period)).

¹¹ *Id.* at 8.

¹² *Id.* at 9.

¹³ *Id.* at 5.

¹⁴ *Id.* at 9 (citing 2012 NYPA, 139 FERC ¶ 61,157 at P 10 (“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 [average coincident load data] of SCR of responsible interface parties that inadvertently failed to submit timely data are in actuality higher than the values being used.”)).

11. NYISO asserts that, while Galt requests a waiver of section 5.12.11.1.2 of the Services Tariff, language in the request for waiver suggests that Galt may instead be seeking a waiver of section 5.14.2.3.1, which would allow relief from the penalty that NYISO assessed as a result of Galt's failure to submit timely data.¹⁵ NYISO states that it strongly opposes Galt's waiver inasmuch as Galt seeks a waiver of section 5.12.11.1.2 to allow Galt to submit, and require NYISO to accept, data for the Summer 2014 capability period. However, NYISO states that it does not oppose a waiver of the penalty provision in section 5.14.2.3.1 of the Services Tariff for relief of the assessed penalty and defers to the Commission on whether Galt has met its burden of proof in seeking this waiver.¹⁶

12. NYISO notes that, while Galt maintains that it has implemented internal corrective measures to ensure this mistake is not repeated, Galt has not provided to or demonstrated any new internal controls to the NYISO. Accordingly, NYISO requests that the Commission direct Galt to provide its compliance plan to NYISO, including controls to address the violation and mitigate the potential for future violations.¹⁷

13. In its answer, Galt clarifies that it seeks relief solely from the assessed penalty pursuant to section 5.14.2.3.1 of the Services Tariff. Galt states that it is not seeking retroactive resettlement of performance factors. Galt also asserts that the limited waiver would not lead to undesirable consequences nor affect any other market participants. Finally, Galt acknowledges NYISO's concerns about its corrective measures and welcomes the opportunity to provide its additional compliance measures to NYISO.¹⁸

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. We grant Galt's requested waiver of section 5.14.2.3.1 of the Services Tariff, to allow NYISO to waive Galt's assessed penalty of \$342,903. The Commission has previously granted limited waivers of electric 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

¹⁵ NYISO Comments at 2.

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 11.

¹⁸ *Id.* at 3.

as harming third parties.¹⁹ We find that Galt's requested waiver of section 5.14.2.3.1 of NYISO's Services Tariff satisfies the aforementioned conditions in this case.

16. We find that Galt acted in good faith and that Galt's failure to submit the verification data was inadvertent. As the error was due to an administrative oversight, Galt states that it has taken measures to rectify the problem by implementing internal corrective measures.²⁰ We also find that the requested waiver is of limited scope because Galt clarified that it is seeking waiver of only the penalty provision contained in section 5.14.2.3.1 to allow relief from the imposition of the penalty related to one capability period. Galt clarified that it is not seeking retroactive resettlement of performance factors. As such, the waiver is limited to Galt's few customers and would not affect other market participants. Thus, we find that the instant waiver request is of limited scope.

17. Further, we find that the waiver will remedy a concrete problem by allowing Galt to provide payments to its resources for performing during their performance period. Moreover, the waiver will not lead to undesirable consequences. NYISO has stated that it does not oppose relieving Galt of the assessed penalty. Given Galt's representation that it is not seeking retroactive resettlement of performance factors, we find no harm to third parties.

18. Although we grant Galt's request for limited waiver of the penalty provisions contained in section 5.14.2.3.1 of the Services Tariff based on the circumstances here, we stress that this is a one-time waiver, 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 Installed Capacity Market cannot be overstated. Also, NYISO has expressed concerns regarding Galt's corrective internal measures and Galt is amenable to providing its plans to NYISO. Thus, we encourage

¹⁹ See, e.g., *Innoventive Power LLC*, 152 FERC ¶ 61,057 (2015); *N.Y. Power Auth.*, 152 FERC ¶ 61,058 (2015); *N.Y. Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,019, at P 7 (2013); *2012 NYPA*, 139 FERC ¶ 61,157 at P 6; *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011).

²⁰ Galt Answer at 3 ("Galt ... has instituted ... internal tracking measures to meet filing deadlines and ... additional oversight to Galt's scheduling functions.").

Galt to provide and demonstrate its corrective plans to NYISO so that this inadvertent oversight is not repeated.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.