

143 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System
Operator, Inc.

Docket No. ER13-869-000

ORDER ON COMPLIANCE FILING

(Issued April 2, 2013)

1. On February 1, 2013, in compliance with the Commission's order in Docket No. EL12-56-000 on December 10, 2012,¹ the New York Independent System Operator, Inc. (NYISO) submitted proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff). NYISO proposes an effective date of April 2, 2013. The December 10, 2012 Order directed NYISO to address tariff ambiguity with respect to its Installed Capacity (ICAP) Special Case Resource (SCR) program rules. In this order, the Commission finds that NYISO's February 1, 2013 filing complies with the December 10, 2012 Order, and accepts NYISO's filing effective April 2, 2013, as requested.

I. Background

2. NYISO's ICAP market design includes a provision for SCRs,² defined as demand response resources and certain behind-the-meter generators, i.e., Local Generators,³ to

¹ *Energy Spectrum v. New York Indep. Sys. Operator, Inc.*, 141 FERC ¶ 61,197 (2012) (December 10, 2012 Order).

² Section 2.19 of the Services Tariff defines Special Case Resource, as pertinent here, as:

Demand Side Resources capable of being interrupted upon demand, and Local Generators, rated 100 kW or higher, that are not visible to the ISO's Market Information System and that are subject to special rules, set forth in Section 5.12.11.1

(continued)

sell capacity in NYISO's capacity auctions. SCRs are represented in the market by Responsible Interface Parties.⁴ Under the SCR program, Responsible Interface Parties that enroll qualified SCRs receive capacity payments in return for the commitment to reduce load when called upon by NYISO.

3. On April 6, 2012 NYISO issued its Technical Bulletin 217, entitled *Procedures for Use of Behind the Meter Generation in the Special Case Resource Program to Prevent Double-Counting of Base Load Generation*. NYISO stated that it issued the technical bulletin to clarify existing rules that require that SCRs be capable of interrupting load upon demand and that SCRs may qualify as capacity only to the extent that the load consumed by the SCR is supplied by the distribution system and not by a behind-the-meter generator.⁵ Technical Bulletin 217 purported to clarify existing tariff provisions that the capacity of an SCR cannot be calculated by including the output of a behind-the-meter generator (Local Generator) during peak hours used to normally supply the SCR's load.

of this ISO Services Tariff and related ISO Procedures, in order to facilitate their participation in the Installed Capacity market as Installed Capacity Suppliers.

³ Section 2.12 of the Services Tariff defines Local Generator as:

[a] resource operated by or on behalf of a Load that is either: (i) not synchronized to a local distribution system; or (ii) synchronized to a local distribution system solely in order to support a Load that is equal to or in excess of the resource's Capacity. Local Generators supply Energy only to the Load they are being operated to serve and do not supply Energy to the distribution 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."

⁵ http://www.nyiso.com/public/webdocs/documents/tech_bulletins/TB_217.pdf.

4. In a complaint filed with the Commission in Docket No. EL12-56-000 (Complaint), Energy Spectrum, Inc. and Riverbay Corporation⁶ (Complainants) argued that the issuance of Technical Bulletin 217 represented a substantial change to the Services Tariff, and therefore, should have been voted on and approved by the NYISO stakeholder process and filed under section 205 of the FPA. Complainants stated that the technical bulletin changed the method used to calculate the baseline capacity values⁷ of Local Generators; and therefore precluded participation in the ICAP market of such generators that previously participated in that market.

5. In the December 10, 2012 Order, the Commission found the Services Tariff and ICAP Manual to be ambiguous with respect to the participation of Local Generator capacity in the SCR program. The Commission found certain tariff provisions open to multiple interpretations including whether the definition of SCR included a Local Generator as a separate category of SCR or as a subset of demand side resources,⁸ and whether a Local Generator must perform load reduction at the direction of NYISO.⁹ The Commission further found that it was inappropriate for NYISO to use a technical bulletin to clarify ambiguous tariff provisions and directed NYISO to revise the Services Tariff to more clearly reflect the requirements of Technical Bulletin 217.¹⁰

II. NYISO's Compliance Filing

6. On February 1, 2013, NYISO submitted proposed revisions to its Services Tariff to comply with the December 10, 2012 Order. NYISO states that these revisions clarify that Local Generators participate in the SCR program as a subset of demand-side resources and not as a separate category. NYISO further states that the proposed revisions clarify that all SCRs (i.e., (i) demand-side resources that curtail load; (ii) demand-side resources that shift load to a Local Generator; and (iii) demand-side resources that both curtail some load and shift some load to a Local Generator) are eligible to qualify and participate in the ICAP/SCR program only if they are available to

⁶ Energy Spectrum is a Responsible Interface Party and Riverbay Corporation operates a 40 MW behind-the-meter cogeneration plant that produces electricity and heat for a housing complex in Bronx, New York.

⁷ Baseline capacity value refers to the amount of available capacity the Local Generator is able to provide to reduce SCR load on the NYISO system.

⁸ December 10, 2012 Order, 141 FERC ¶ 61,197 at P 45.

⁹ *Id.* P 46.

¹⁰ *Id.* PP 51-52.

cause a load reduction on the transmission system and/or distribution system at the direction of NYISO in a measurable and verifiable manner. NYISO states that its compliance filing makes it clear that capacity from a Local Generator that can participate in the NYISO ICAP/SCR program is that amount of generation that is available to be produced in order to shift load from the transmission system and/or distribution system onto the Local Generator when it is needed by NYISO operations.

7. NYISO adds that the proposed revisions also clearly reflect the requirements originally provided in Technical Bulletin 217 for reporting metered load data used to calculate an Average Coincident Load¹¹ baseline. It states that the revisions make clear that this metered load value is exclusive of any generation or other supply source located behind the SCR's meter that served the SCR's load.

8. NYISO also proposes to revise the definition of SCRs to clarify that all SCRs are demand-side resources that must be available to reduce load from the transmission system and/or distribution system at the direction of NYISO. NYISO asserts that the proposed revisions make it clear that SCRs can participate by curtailing load or shifting load to a Local Generator, or some combination of these two activities, at the direction of NYISO.

9. NYISO also proposes to revise section 5.12.11.1 to indicate that SCRs must be available to operate at the direction of NYISO in order to reduce load from the New York State transmission system and/or the distribution system. In addition, NYISO proposes to modify section 5.12.11.1 to make it clear that a Responsible Interface Party must provide NYISO with the amount of local generation supplying emergency and incremental (as opposed to baseload) energy during the New York Control Area and Locality peak hour(s) upon which the load-serving entity's (LSE) unforced capacity obligation is determined. NYISO includes this generation in the load forecasts used to determine the LSE Unforced Capacity Obligation.¹² NYISO also proposes to replace the undefined term "distributed generator" with the tariff-defined term "Local Generator."

¹¹ NYISO proposes to revise the Services Tariff's definition of Average Coincident Load, in part, to provide that it is "the value in each Capability Period for each Special Case Resource that is equal to the average of the Special Case Resource's metered hourly Load that is supplied by the NY [State] Transmission System and/or the distribution system during the SCR Load Zone Peak Hours applicable to such Special Case Resource...." See proposed section 2.1 of the Services Tariff.

¹² NYISO February 1, 2013 Filing at Attachment II.

10. NYISO also proposes changes to section 5.12.11.1.1 to clarify the calculation of an SCR's Average Coincident Load baseline values. NYISO states that these revisions are consistent with the proposed clarifications made to the definition of Average Coincident Load and the requirements for reporting and calculating the Average Coincident Load.

11. NYISO requests an effective date of April 2, 2013, to provide adequate time for NYISO and market participants to complete the SCR enrollment process prior to the close of enrollment for the summer capability period that begins on May 1, 2013.

III. Notice of Filing and Responsive Pleadings

12. Notice of NYISO's Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 9685 (2013), with interventions, comments, and protests due on or before February 22, 2013. New York State Public Service Commission filed a notice of intervention.

13. Motions to intervene and comments were filed by Joint Responsible Interface Parties (Joint RIPs),¹³ New York Energy Consumers Council, Inc., Northeast Clean Heat and Power Initiative, The Durst Organization Inc., Consumer Power Advocates,¹⁴ and Source One. Energy Spectrum, Inc. and Riverbay Corporation jointly filed Supplemental Comments to those filed by Joint RIPs. On March 11, 2013, NYISO filed an answer to the filed comments.

A. Comments

14. Joint RIPs assert that NYISO's compliance filing adds additional ambiguity and lack of clarity to the rules surrounding the participation of Local Generators in the NYISO SCR program, including with respect to metering requirements for SCR generators. They state that NYISO's filing addresses, in part, the inconsistencies noted in the Commission's December 10, 2012 Order, but they also assert that there are three areas where immediate action is needed within the NYISO's governance process. Joint RIPs state that the proposed revisions do not address: (1) whether baseload distributed

¹³ Joint RIPs consist of Converge, Inc.; Energy Connect, Inc.; Digital Energy, Inc.; Energy Spectrum, Inc.; and Riverbay Corporation.

¹⁴ Consumer Power Advocates consist of Continuum Health Partners, Fordham University, Luthin Associates, Inc., Memorial Sloan Kettering Cancer Center, Montefiore Medical Center, Mount Sinai Medical Center, New York Presbyterian Hospital, New York University, NYU Hospitals Center.

generation¹⁵ and energy efficiency can participate as SCRs; (2) required metering configurations for Local Generators at SCR facilities; and (3) the treatment of SCR generation where output exceeds the load of the host facility, i.e. exporting power to the grid.

15. Joint RIPs find the NYISO's compliance filing to be centered on the requirement that SCRs must demonstrate, during an SCR event, a change in load at the direction of NYISO.¹⁶ They argue that this requirement prohibits distributed generation serving baseload and energy efficiency from participating as an SCR. Joint RIPs state that NYISO's position ignores the benefit that baseload distributed generation and energy efficiency provide with respect to their annual contributions to lower the installed capacity requirements, a benefit recognized by NYISO in the past.

16. Joint RIPs are also concerned that the removal of the baseload portion of an SCR generator's contribution would *de facto* require the use of a dedicated interval meter on SCR generators.¹⁷ They argue that such a requirement would remove the option that SCR generators previously had to use either net metering or direct load/generator metering. Joint RIPs state that this issue should immediately be addressed within the NYISO stakeholder process.

17. Joint RIPs note that the definition of Local Generator does not permit an SCR generator whose megawatt output exceeds the SCR's load to participate in the SCR program. They state that this creates a conflict between the Services Tariff and the ICAP Manual which explicitly permits the use of generation in excess of host load to count as SCR capacity. The Joint RIPs request that the Commission order NYISO to hold a stakeholder technical conference to analyze these issues and report on the status of the discussions in its semi-annual demand response information report to the Commission.

18. New York Energy Consumers Council, Inc., Northeast Clean Heat and Power Initiative, The Durst Organization Inc., Consumer Power Advocates, and Source One each filed comments indicating their support for the Joint RIPs' comments.

¹⁵ As used here, baseload distributed generation appears to refer to the megawatts of a distributed generator that is normally used to serve its host load and therefore not available to respond at NYISO's direction to reduce demand on the transmission and/or distribution systems.

¹⁶ Joint RIPs February 19, 2012 Comments at 4.

¹⁷ *Id.* at 8.

B. Answers

19. NYISO states its proposed tariff revisions specifically respond to the December 10, 2012 Order to more clearly reflect the requirements of Technical Bulletin 217—metered load requirements for the SCR’s ACL baseline calculations, and eligibility requirements that all SCRs, including those using Local Generators, be capable of interrupting load at the direction of NYISO. NYISO asserts that the tariff revisions also eliminate the Commission-identified ambiguities by clarifying that all SCRs must be able to reduce load for four hours at the direction of NYISO. NYISO explains that it is imperative that the revisions be accepted by April 2, 2013 to be in effect for the summer capability period that begins on May 1, 2013 in order to ensure that SCR resources are in place to maintain reliability for the summer.

20. NYISO asks the Commission to reject the attempts of commenters to expand the scope of the compliance directive by addressing other alleged ambiguities, for example, direct metering of SCR generators and treatment of SCR generation in excess of host load; or to make other program enhancements, which NYISO states must receive stakeholder and NYISO Board approval prior to being submitted to the Commission in a section 205 filing. NYISO further states that the instant compliance filing proceeding is not the proper procedural forum for a general discussion, that is, a technical conference, on the role of baseload distributed generation and energy efficiency in contributing to system adequacy.¹⁸

IV. Commission Determination**A. Procedural Matters**

21. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. 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 a protest or answer unless otherwise ordered by the decisional authority. We will accept NYISO’s answer filed in this proceeding because it has provided information that assisted us in our decision-making process.

¹⁸ NYISO March 11, 2013 Answer at 6.

B. Substantive Matters

23. In the December 10, 2012 Order, the Commission identified ambiguous tariff provisions that could be subject to multiple interpretations, including whether, and if so, how, the capacity of a Local Generator is eligible to participate in the NYISO SCR program. The Commission also found that NYISO's use of a technical bulletin to clarify these rules was inappropriate.

24. We accept the revisions to the Services Tariff submitted by NYISO as being in compliance with the December 10, 2012 Order to be effective April 2, 2013, as requested. Our review of NYISO's proposed tariff revisions is limited to a consideration of whether NYISO complied with the Commission's directives in the December 10, 2012 Order. We find that the revised tariff provisions sufficiently clarify the enrollment of SCR megawatts that use Local Generators by eliminating the ambiguities identified by the Commission and moving the requirements of Technical Bulletin 217 into the Services Tariff as directed by the Commission. Therefore, as discussed below, we find NYISO has complied with the December 10, 2012 Order.

25. The Commission found the definition of SCR to be ambiguous with respect to the role of a Local Generator and whether such a generator is required to perform demand response, i.e. to reduce load at the direction of NYISO.¹⁹ To address this, NYISO proposes revisions to the definitions of both Average Coincident Load²⁰ and SCR. NYISO proposes that Average Coincident Load²¹ be changed to specify that the SCR capacity value is the SCR's metered hourly load "that is supplied by the NY [State] Transmission System and/or distribution system" coincident with the local peak hours. NYISO proposes an additional provision that load supported by a Local Generator during such hours may not be included in the SCR's metered load values for the calculation of Average Coincident Load. Revisions to section 5.12.11.1.1 of the Services Tariff, *Special Case Resource Average Coincident Load*, specify that the Responsible Interface Party must provide NYISO with metered load data showing that the energy consumed by the SCR during the peak hours used to determine the resource's Average Coincident Load does not include generation produced by a Local Generator or other resource located behind the meter. We find that these changes clarify that supply from a Local

¹⁹ December 10, 2012 Order, 141 FERC ¶ 61,197 at P 46.

²⁰ NYISO also proposes similar revisions to the definition of Provisional Average Coincident Load used for new resources that do not have documented performance history.

²¹ See *supra* P 7.

Generator consumed by the SCR at peak time cannot be claimed as an SCR ICAP resource.

26. Further, the proposed additions to the definition of SCR clarify that an SCR can include a demand-side resource with a Local Generator “that can be operated to reduce Load from the NY[State] Transmission System or the distribution system at the direction of [NYISO].”²² The definition is also clarified to specify that the demand-side resource’s load, i.e. the SCR’s load, must be capable of being interrupted upon demand at the direction of NYISO, including the specification that a Local Generator be able to be used to reduce the SCR’s load from the transmission/distribution systems at the direction of NYISO. We find that these revisions, taken together, add clarity and eliminate the ambiguity as to how “Local Generator capacity is eligible to participate in NYISO’s SCR program”²³ as directed by the December 10, 2012 Order.

27. With respect to section 5.12.11.1 of the Services Tariff, NYISO proposes revisions to clearly affirm that SCRs must be available to operate at the direction of NYISO to reduce load from the transmission/distribution systems. Additional revisions to this section require the Responsible Interface Party to provide NYISO with the amount of energy produced by a Local Generator coincident with the NYISO or local peak load such that this generation is taken into account in determining the LSE’s unforced capacity obligation. We find that these revisions clarify the role of Local Generators in determining SCR capacity, including the requirement that it must be able to reduce the SCR’s load on the system at NYISO’s direction - issues that gave rise to the issuance of Technical Bulletin 217. NYISO’s revisions also eliminate the ambiguous, undefined term “distributed generation” from the tariff that the Commission identified in the December 10, 2012 Order²⁴ and replace it with the defined term “Local Generator.”

28. Joint RIPs acknowledge that the instant filing addresses the ambiguities raised by the Commission in the December 10, 2012 Order by specifically prohibiting baseload distributed generation²⁵ from participating as an SCR. Joint RIPs also acknowledge that NYISO’s revisions clarify definitions and tariff provisions to specify that SCRs must

²² Services Tariff § 2.19.

²³ December 10, 2012 Order, 141 FERC ¶ 61,197 at P 44.

²⁴ *Id.* at n.3.

²⁵ Joint RIPs use the term “distributed generator,” (a term that Complainants pointed out in the Complaint is not defined in the tariff) interchangeably with Local Generator. In this context, we assume Joint RIPs to mean Local Generator in their pleadings.

reduce load at the direction of NYISO, by eliminating the portion of an SCR's load served by a Local Generator operating during peak hours, and by clarifying that metered load values cannot include any load that was supported or served by a behind the meter supply resource. Joint RIPs also acknowledge that the provisions permit Local Generators to be included in an SCR's Average Coincident Load to the extent that it has available capacity above its baseload to respond to NYISO's call for demand reduction.²⁶ With the exception of the issues discussed below, Joint RIPs do not object to any proposed tariff revisions.

29. Joint RIPs maintain that the proposed tariff revisions potentially require the use of dedicated interval meters on Local Generators, thereby raising a new ambiguity.²⁷ We disagree that the proposed tariff revisions create a new requirement. Under the existing Service Tariff's SCR provisions, the SCR is required to reduce load from the system in order to qualify its capacity. This existing requirement has not been changed, only clarified. For example, the proposed tariff revisions clarify the amount of a Local Generator's capacity that may qualify as an SCR capacity resource. These proposed tariff revisions do not change the information that is required under the NYISO's existing SCR program rules. The existing section 5.12.11.1 of the Services Tariff addresses the obligation of the Responsible Interface Party to comply with the verification and validation requirements in order to accurately calculate the SCR's Average Coincident Load. Accordingly, we disagree with the Joint RIPs that the proposed tariff revisions create a requirement for the use of dedicated interval meters on Local Generators.

30. Joint RIPs also state that NYISO introduced additional terms into the Services Tariff that are undefined and add further ambiguity, such as "other behind-the-meter generator" and "other supply source." We disagree. NYISO added these terms to clarify the computation of Average Coincident Load, stating that the metered SCR load is "exclusive of any generation produced by a Local Generator, other behind-the-meter generator, or other supply source located behind the [SCR's] meter, that served some of the [SCR's] Load."²⁸ We find that these terms do not add ambiguity to the tariff. In fact, these terms clarify that the Average Coincident Load should not be calculated to include behind-the-meter supply coincident with the zonal peak and thus, NYISO has clarified which megawatts should be excluded from the calculation.

²⁶ Joint RIPs February 19, 2013 Comments at 2-3.

²⁷ *Id.* at 8.

²⁸ Section 5.12.11.1.1 of the Services Tariff.

31. Finally, we find that certain issues raised by commenters are beyond the scope of this compliance filing. These issues include the capacity value treatment of the output of SCR generation in excess of the host load, and the role of baseload distributed generation and energy efficiency in contributing to system adequacy. The Commission acknowledges NYISO's commitment to additional stakeholder processes beginning in the first half of 2013 to explore these issues and urges parties to continue their efforts to address these potential market enhancements.²⁹

The Commission orders:

NYISO's proposed revisions to the Services Tariff are hereby accepted effective April 2, 2013, as requested.

By the Commission. Commissioner Clark is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁹ NYISO March 11, 2013 Answer at 9.

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Docket No. ER13-869-000

(Issued April 2, 2013)

CLARK, Commissioner, *concurring*:

I write separately today to note that I support the result in this case, because it puts an end to the illegitimate enrollment of market participants in NYISO's ICAP/SCR Program which is a program available to interruptible load and emergency backup generation designed to respond in the case of reliability events.

As I explained in my joint dissent issued in the related docket,¹ the participation and compensation of resources that purport to provide demand response yet do not and cannot reduce system load, undercuts the fundamental integrity of emergency reliability programs. If demand side resources do not intend or cannot reduce load from the transmission system and/or distribution system when directed to do so by NYISO, they cannot provide the reliability service that the ICAP/SCR Program has always intended to provide. In short, the program is a last line of defense in an effort to keep the lights on.

I do not believe NYISO's Tariff was ambiguous before, but in the interest of protecting the integrity of emergency/reliability demand response programs, find these tariff revisions provide further clarity.

Accordingly, I respectfully concur.

Tony Clark
Commissioner

¹ *Energy Spectrum, Inc. and Riverbay Corporation v. N. Y. Indep. Sys. Operator, Inc.*, 141 FERC ¶ 61,197 (2012) (LaFleur, Comm'r, and Clark, Comm'r, dissenting).