

170 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

NRG Curtailment Solutions, Inc.

v.

Docket No. EL18-188-000

New York Independent System Operator, Inc.

ORDER ON PAPER HEARING

(Issued January 23, 2020)

1. On December 20, 2018, the Commission issued an order granting in part NRG Curtailment Solutions, Inc.'s (NRG) complaint against New York Independent System Operator, Inc. (NYISO) regarding NYISO's metering requirements.¹ The Commission found that NYISO's metering requirements in the NYISO Market Administration and Control Area Services Tariff (Services Tariff) are unjust, unreasonable, and unduly discriminatory, and established paper hearing procedures, under section 206 of the Federal Power Act (FPA),² to supplement the record to determine the appropriate remedy.³ In this order, we find that NYISO's proposed remedy, as described in its initial and reply briefs, and the issues raised in NRG's complaint, have been addressed and rendered moot by subsequent developments in a related proceeding in Docket No. ER19-2276-000, et al. regarding NYISO's distributed energy resources (DER) market design filing.⁴

¹ See *NRG Curtailment Sols., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,247 (2018) (December 20 Order).

² 16 U.S.C. § 824e (2018).

³ December 20 Order, 165 FERC ¶ 61,247 at P 39.

⁴ NYISO filed its initial DER market design filing on June 27, 2019, in Docket No. ER19-2276-000. The proposal was revised in response to Commission staff deficiency letters, with the most recently revised NYISO tariff filing made on

I. Background

2. In 2001, the New York State Public Service Commission (New York Commission) opened electric metering services for large retail customers to competition. In doing so, it developed and approved practices and procedures that govern the competitive metering program. The New York Commission's competitive meter service program included certifications designed to evaluate the qualifications of applicants to install and read meters for utility billing purposes.⁵ NYISO's Services Tariff currently requires demand response providers to comply with verification and validation procedures and to provide certain hourly metering data as set forth in the ISO Procedures.⁶ NYISO's manuals state that NYISO will only accept metering data from a NY DPS-certified Meter Service Provider or Meter Data Service Provider.⁷

3. On July 24, 2018, NRG filed a request for a waiver or, in the alternative, a complaint alleging that NYISO's Services Tariff was unjust and unreasonable because it requires Curtailment Service Providers and Responsible Interface Parties participating in the NYISO-administered installed capacity market to use a NY DPS-certified Meter Service Provider or Meter Data Service Provider.⁸

November 26, 2019. Concurrently with this order, the Commission is issuing an order accepting NYISO's proposed tariff revisions for its DER market design. *See N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,033 (2020).

⁵ In accordance with the New York Commission's policy, the New York State Department of Public Service (NY DPS) administered the certification program until early 2019. *See, e.g.*, New York Commission Aug. 13, 2018 Comments at 1-2, 4-7; P 5 *infra*.

⁶ NYISO, Services Tariff, § 5.12.11.1; NYISO, Services Tariff, Attachment G, § 22.8.

⁷ *See, e.g.*, NYISO Emergency Demand Response Program Manual, Manual No. 7, § 5.1 (Manual No. 7); Revenue Metering Requirements Manual, Manual No. 25, § 4.3 (Manual No. 25); *see also* Installed Capacity Manual, Manual No. 4, § 4.12.2; Day-Ahead Demand Response Programs Manual, Manual No. 5, § 6.1.

⁸ NYISO, Services Tariff, § 5.12.11; NYISO, Services Tariff, Attachment G, § 22.8; NYISO Manual 4, § 4 (Installed Capacity Manual); NYISO Manual 5, § 6 (Day-Ahead Demand Response Program Manual); NYISO Manual 7, § 5 (Emergency Demand Response Program Manual); NYISO Manual 25, § 4 (Revenue Metering Requirements Manual).

4. In the December 20 Order, the Commission denied NRG's request for waiver of NYISO's Services Tariff,⁹ granted in part the complaint, and instituted paper hearing procedures. The Commission established paper hearing procedures to supplement the record regarding an appropriate remedy.

5. On February 8, 2019, the New York Commission issued an order terminating the NY DPS certification program, effective immediately, and cancelling all Meter Service Provider/Meter Data Service Provider certifications granted through those programs.¹⁰

II. Notice and Responsive Pleadings

6. Notice of the complaint initiating the section 206 proceeding in this docket was published in the *Federal Register*, 83 Fed. Reg. 36,924-925 (2018). Following the issuance of the December 20 Order, Advanced Energy Management Alliance (AEMA) and Consumer Power Advocates filed timely motions to intervene.

7. Pursuant to the schedule established in the December 20 Order, NRG and NYISO filed initial briefs on January 31, 2019, and February 4, 2019, respectively. On February 4, 2019, AEMA filed comments. NRG and NYISO filed reply briefs on March 5 and 6, 2019, respectively. On May 10, 2019, NYISO submitted a motion to hold this proceeding in abeyance pending Commission action on NYISO's then-anticipated DER market design filing. On May 24, 2019, NRG filed an answer to NYISO's motion. On May 31, 2019, NYISO filed an answer to NRG's answer.

A. Initial Briefs and Comments

8. In its Initial Brief, NYISO outlines a Meter Services Entity (MSE) framework, which it states it developed as part of its ongoing initiative to integrate DERs into its wholesale markets.¹¹ Under the outlined MSE framework, a DER aggregator or demand side resource can obtain wholesale metering and meter data services from a local transmission owner, from an MSE, or may serve as its own MSE if it meets eligibility

⁹ The Commission found that NRG's request for waiver would effectively establish a new self-certification process not currently found in the Services Tariff. December 20 Order, 165 FERC ¶ 61,247 at P 36.

¹⁰ NYISO Reply Brief at 8-9 (citing Case No. 18-E-0595, *et al.*, *In re Meter Service Provider/Meter Data Service Provider Programs*, Order Terminating Metering Programs (Feb. 8, 2019)).

¹¹ NYISO Initial Brief at 2, 4-6, 11-12, 16.

requirements.¹² In addition, NYISO states that the described framework allows NYISO to oversee and audit metering and meter data services provided by MSEs to validate compliance. NYISO states that, to ensure that it can adequately perform its oversight role, MSEs will have certain responsibilities and the MSE framework would not include a self-certification process.¹³

9. In their briefs, NRG and AEMA argue that NYISO should not be responsible for approving or pre-approving third parties to provide metering services, but rather that metering service providers should be responsible for ensuring that they meet metering standards as established by the North American Energy Standards Board, the American National Standards Institute, and the National Institute of Standards and Technology.¹⁴ NRG explains that such a self-certification process exists in neighboring Regional Transmission Organizations and Independent System Operators, including ISO New England and PJM.¹⁵ AEMA states that any third-party certification rules should be added to NYISO's Services Tariff and manuals and should comply with industry standards for meter installation, maintenance, and testing.¹⁶

B. Reply Briefs

10. NYISO agrees with NRG and AEMA that the application of industry-accepted standards will help achieve accurate and reliable metering, but argues that those standards must be implemented by an entity possessing the necessary technical competence. NYISO argues that its MSE framework requires an entity to meet basic eligibility criteria before it is authorized to provide metering services. NYISO argues that the Commission should reject NRG's and AEMA's self-certification proposal.¹⁷ NYISO notes that, in response to the New York Commission's termination of the NY DPS's certification programs effective February 8, 2019, and cancellation of all certifications granted through that program, NYISO published a Technical Bulletin permitting Curtailment Service Providers and Responsible Interface Parties that were using a previously certified Meter Service Provider or Meter Data Service Provider as of February 8, 2019, to

¹² *Id.* at 6.

¹⁴ NRG Initial Brief at 3-6; AEMA Comments at 3-4.

¹⁵ NRG Initial Brief at 3.

¹⁶ AEMA Comments at 3.

¹⁷ NYISO Reply Brief 1-2.

continue using those entities until the earlier of October 31, 2019, or the effective date for NYISO's proposed MSE tariff revisions.¹⁸

11. In its Reply Brief, NRG argues that NYISO has not explained why it would not be cost effective to implement a self-certification process and why a self-certification process like PJM's would not minimize NYISO's administrative burden.¹⁹

C. NYISO's Motion and NRG's Answer

12. NYISO submitted a motion asking the Commission to hold this proceeding in abeyance pending Commission action on NYISO's then-anticipated DER market design filing. In its motion, NYISO argued that abeyance was appropriate because the metering framework that it was planning to include in its anticipated DER market design filing would offer a comprehensive resolution of the metering issues that were identified in the complaint proceeding.²⁰ NYISO states that its Management Committee approved the DER market design filing, and, pending authorization from the NYISO Board of Directors to submit its FPA section 205 filing, would submit the filing by the end of June 2019.²¹ In opposition to NYISO's motion, NRG argues that the Commission should deny NYISO's motion because granting it could result in a delay in resolving the metering issues raised herein.²²

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁸ *Id.* at 9 (citing *Technical Bulletin No. 247: Responsible Interface Party (RIP) and Curtailment Service Provider (CSP) Meter Data Submission* (Feb. 27, 2019), <https://www.nyiso.com/documents/20142/2931465/TB-247-v2019-02-27-Final.pdf>).

¹⁹ NRG Reply Brief at 1-2.

²⁰ See NYISO Motion to Hold Proceeding in Abeyance at 1-2 (filed May 10, 2019).

²¹ *Id.* at 2.

²² NRG's Answer to NYISO's May 10, 2019 Motion to Hold Proceeding in Abeyance at 2-3.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept NYISO's answer and, therefore, reject it.

B. Substantive Matters

15. We find that NYISO's revisions to section 13 of its Services Tariff, made to establish a new framework for metering requirements, as approved in Docket No. ER19-2276-000, et al., address the issues raised in the instant complaint.²³ We also find that NYISO's proposed MSE framework, as described in its initial and reply briefs filed in this proceeding, its motion to hold the proceeding in abeyance, and NRG's proposed changes to NYISO's metering policy have been rendered moot by NYISO's subsequent filing and the Commission's approval of the tariff revisions in Docket No. ER19-2276-000, et al. Therefore, no further action is required on the complaint and this proceeding is now terminated.

The Commission orders:

The issues presented in this proceeding have been addressed by a filing made in and an order issued in Docket No. ER19-2276-000, et al. Accordingly, the proceeding in Docket No. EL18-188-000 is hereby terminated.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ NRG filed comments on NYISO's DER market design filing, Docket No. ER19-2276-000, et al., but did not protest the metering services provisions proposed therein. In fact, NRG requested that the Commission act on the DER market design filing by a date certain to ensure that there is no gap between the termination of the MDSP/MSP program and the issuance of an MSE certification. NRG Comments at 3, Docket No. ER19-2276-000 (filed Jul. 18, 2019).