

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.;)
Compliance Filing and Request for Extension of)
Time of Effective Date; Docket Nos. RM16-23-000,) Docket No. ER19-467-000
AD16-20-000, ER19-467-000)

PROTEST OF THE CITY OF NEW YORK

Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.211, the City of New York (“City”) submits the following protest in response to the December 4, 2018 Combined Notice of Filings #1 by the Commission, and the underlying December 3, 2018 *Compliance Filing and Request for Extension of Time of Effective Date*¹ filed by the New York Independent System Operator, Inc. (“NYISO”) in the above-referenced docket (“Tariff Filing”) seeking approval of tariff language to establish market rules for Energy Storage Resources (“ESRs”) as directed by the Commission on February 15, 2018 in Order No. 841.²

The City has continued concerns that the NYISO’s Tariff Filing is not just and reasonable and does not fully comply with the Commission’s directives in Order No. 841 to develop tariff provisions for “specific types of resources when those resources have unique physical and operational characteristics or other attributes that warrant distinctive treatment from other market

¹ *New York Independent System Operator, Inc.*, Docket No. 19-467-000, “Compliance Filing and Request for Extension of Time of Effective Date” (filed December 3, 2018) (“NYISO Tariff Filing”).

² *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (February 15, 2018), 83 Fed. Reg. 9580 (Mar. 6, 2018), Errata Notice (Feb 28, 2018) (“Order No. 841”). All citations to Order No. 841 in this Protest are to the revised order included with the February 28, 2018, errata notice.

participants” as well as to “help facilitate the participation of electric storage resources in the [Regional Transmission Organization and Independent System Operator] RTO/ISO markets.”³

The City fully supports increasing opportunities in the wholesale markets for ESRs and submits that the NYISO’s Tariff Filing is deficient in that it creates barriers, rather than removes barriers, and has failed to create a complete set of rules that are just and reasonable and recognize the distinct physical and operational characteristics of ESRs. The Commission commenced this proceeding and issued its Notice of Proposed Rulemaking (“NOPR”) in recognition of a need for *reform* because “market rules designed for traditional resources can create barriers to entry for emerging technology.”⁴ Such reform has not occurred.

The Commission and the City share the same policy objective to create a market that fully integrates ESRs. The City is a strong proponent of increasing customer access to ESRs and has made unprecedented commitments to achieve its objectives of creating a resilient and low-carbon energy supply, improving air quality, and reducing greenhouse gas emissions by 80 percent from 2005 levels by 2050, as set forth in *One New York: The Plan for a Strong and Just City* (“OneNYC”).⁵ The City has established an aggressive ESR deployment target of 100 MWh in New York City by 2020.⁶ These goals complement the State’s enhanced Clean Energy Standard (“CES”) that 70% of all electricity used in New York by 2030 be generated from renewable

³ Order No. 841 at P 3.

⁴ *Id.* at P 10 (emphasis added).

⁵ *One New York: The Plan for a Strong and Just City* (issued April 2015) at 166, available at www.nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf.

⁶ *New York City’s Roadmap to 80x50* (issued September 26, 2016) at 48-49, available at: <http://www.nyc.gov/80x50>.

resources.⁷ Moreover, New York State Governor Andrew Cuomo recently announced his plans for New York State to be 100% carbon-free by 2040.⁸

The New York State Public Service Commission (“NYPSC”) issued a policy order that acknowledged the critical role ESRs will play in “reduc[ing] system peak load demand during critical periods, increase[ing] the overall efficiency and resiliency of the electric grid, and displac[ing] fossil fuel-based generation.”⁹ The NYPSC’s policies further the use of ESRs as a system planning tool and to reduce retail delivery rates, which are appropriate matters of state authority under the Federal Power Act (“FPA”).¹⁰ When optimally sited and dispatched, ESRs can be used as an alternative to traditional distribution system investments and to address system peaks – especially in areas of the city that are constrained.

To ensure increased proliferation of ESRs, New York State’s Energy Storage Policy Order announced a Statewide energy storage goal of 3,000 MW by 2030, with an interim goal of 1,500 MW by 2025, and also laid out a framework that will encourage ESR development.¹¹ Significantly, 300 MW of the State’s target must be deployed in Consolidated Edison Company of New York, Inc.’s service territory (NYISO Zone J, New York City) by December 31, 2022.¹²

⁷ New York State Governor Cuomo 2019 State of State. *See also* Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016) at 2 (setting the States initial CES goal at 50x30).

⁸ Governor Cuomo Announces Green New Deal Included in 2019 Executive Budget, available at: <https://www.governor.ny.gov/news/governor-cuomo-announces-green-new-deal-included-2019-executive-budget> (January 17, 2019).

⁹ Case 18-E-0130, In the Matter of Energy Storage Deployment Program, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018), p. 3 (“NYPSC Energy Storage Policy Order”).

¹⁰ FPA §824o(i)(3).

¹¹ *Id.*

¹² *Id.* at 55.

In reviewing the NYISO's Tariff Filing, it is evident that it applies many of the existing market rules for traditional resources to ESRs, and neglects to go beyond what already exists in its Market Administration and Control Area Services Tariff ("Services Tariff") and Open Access Transmission Tariff ("OATT") to create innovative market rules to engage ESRs based on unique physical and operational characteristics. Moreover, the NYISO's Tariff Filing improperly attempts to use the Commission's compliance filing directive to make general changes to certain Buyer Side Market Power Measures for Installed Capacity ("BSM Rules") applicable to all Generators, not just ESRs.

The City protests certain aspects of the Tariff Filing: (i) application of Buyer Side Market Power Measures for Installed Capacity (the "BSM Rules") to ESRs; (ii) extension of the NYISO's BSM Rules to resources under 2 MW; and (iii) the NYISO's prohibition on ESR dual participation in both the retail and wholesale markets.¹³ Accordingly, for the reasons set forth herein, the City urges the Commission to reject the NYISO's Tariff Filing as deficient and require the NYISO to submit revised tariff amendments consistent with the modifications discussed below, following a timeline that enables implementation of ESR market rules by the NYISO-requested May 1, 2020 date.¹⁴

¹³ The City supports and adopts the positions advanced in the protest submitted by the New York State Public Service Commission and the New York Energy Research & Development Authority (collectively the "NY State Entities") in response to the NYISO's Tariff Filing in Docket No. 19-467-000.

¹⁴ The NYISO's Tariff Filing requests that the Commission grant an extension of the implementation timeframe for the proposed tariff revisions contained in this compliance filing until no earlier than May 1, 2020. Tariff Filing at 64. The City does not propose to extend the implementation deadline as a result of revising the Tariff Filing.

I. BACKGROUND

In 2015, the Commission “[became] concerned that [ESRs] face barriers that limit their participation in the RTO/ISO markets.”¹⁵ Therefore, in April 2016, the Commission’s Staff issued data requests to the RTOs and ISOs that sought,

[i]nformation on rules that affect the participation of electric storage resources in the [RTO and ISO] markets, including, but not limited to the eligibility of electric storage resources to participate [...] the qualification and performance requirements for market participations, required bid parameters, and the treatment of electric storage resources when they are receiving electricity for later injection to the grid.¹⁶

Commission Staff requested this information to determine, “whether barriers exist to the participation of electric storage resources [that are] potentially leading to unjust and unreasonable wholesale rates,” and to the extent those barriers do exist, to determine “whether any tariff changes are warranted.”¹⁷ Commission Staff simultaneously requested comments from stakeholders regarding, *inter alia*, “whether the RTO and ISO market rules provide sufficient clarity to facilitate the participation of technically-capable electric storage resources in the RTO and ISO markets.”¹⁸

The Commission subsequently issued a Notice of Proposed Rulemaking (“NOPR”) that proposed to require each RTO and ISO to revise its tariff to better accommodate the physical and

¹⁵ *Electric Storage Participation*, 162 FERC ¶ 61, 127 (2018) at P 11 (“Order 841”).

¹⁶ *Electric Storage Participation*, Docket No. A16-20-000, New York Independent System Operator Electric Storage Data Request (April 11, 2016) (“NYISO Data Request”).

¹⁷ NYISO Data Request at 2.

¹⁸ *See Electric Storage Participation*, Docket No. AD16-20-000, Stakeholder Data Request.

operational characteristics of ESRs.¹⁹ The Commission observed in the NOPR that such changes were necessary because,

[m]any tariffs were originally developed in an era when traditional generation resources were the only resources participating in the organized wholesale electric markets [...] if an RTO/ISO is not able to update its market rules before a new resource becomes commercially able to sell into the organized wholesale electric markets, the new resource may need to participate under one of the existing participation models developed for some other type of resource. Doing so may limit the market opportunities for new resources and correspondingly limit the potential supply of some services [...] further, new resources may have difficulty creating momentum for the market rule changes necessary to facilitate their participation and may thus need to spend considerable time and effort to gain entry into the organized wholesale markets.²⁰

Further, the Commission noted that applying existing rules to new technologies may “fail to recognize the electric storage resources’ physical and operational characteristics and their ability to provide energy, capacity and ancillary services in the organized wholesale electric markets,” which would “serve to limit the participation of electric storage resources [and] result in inefficient use of these resources [thereby] impacting the competitiveness of the market.”²¹ The City submitted comments generally supporting the NOPR, and further recommending that,

(1) wholesale market rules should reflect the attributes of different types of resources to take full advantage of their respective capabilities; (2) wholesale market rules should be structured to encourage resources to take full advantage of their respective capabilities; and (3) dual participation in the wholesale and retail programs should be compensated so long as resources are being compensated for different services.²²

¹⁹ *Electric Storage Participation*, 157 FERC ¶61,121 at PP 2, 4 (2016) (“NOPR”).

²⁰ NOPR at P 2.

²¹ NOPR at P 12.

²² *Electric Storage Participation*, Docket Nos. RM16-23-000 and AD16-20-000, Comments of the City of New York (February 23, 2017).

The Commission subsequently issued Order No. 841 on February 15, 2018, in which it determined that the, “RTO/ISO market rules are unjust and unreasonable in light of barriers that they present to the participation of electric storage resources in the RTO/ISO markets, thereby reducing competition and failing to ensure just and reasonable rates.”²³ As such, Order No. 841 directs the RTOs and ISOs to revise its tariffs to remove barriers to the participation of electric storage resources in the wholesale markets.²⁴

The City was an active participant in the NYISO stakeholder process during the development of the ESR market rules. The City, and many other stakeholders (including the NY State Entities) raised numerous concerns regarding the NYISO’s proposal throughout the course of the working group discussions, which are discussed in more detail herein and in the NY State Entities’ filing. However, despite the City and other stakeholders’ feedback, the Tariff Filing contains many provisions that contravene the Commission’s directives in Order No. 841 to increase ESR participation in the wholesale markets.

II. PROTEST

In Order No. 841, the Commission emphasized the “ongoing, vital role of the states with respect to the development and operation of electric storage resources.”²⁵ There is a critical need for the opportunity to access carbon-free resources – especially in light of New York State and City policies. Indeed, ESRs are a particularly attractive technology for New York City given their unique physical and operational characteristics. The existing in-city generation fleet is inefficient and old. Approximately 70% of generating units in New York City will have a vintage above 50

²³ Order No. 841 at P 1.

²⁴ *Id.* at P 10.

²⁵ *Id.* at P 36.

years old when the Indian Point Energy Center fully retires in 2021.²⁶ The current in-city fleet generally requires more fossil fuel than modern units, thus increasing emissions as compared to alternate technologies. In the Energy Storage Policy Order, the NYPSC noted that ESRs may be able to “allow New York to meet its peak power needs without solely relying on the oldest and dirtiest peak generating plants, many of which lay mostly idle and are approaching the end of their useful lives.”²⁷

Though it is desirable to replace these resources with renewable technologies, siting solar and other renewable generation within New York City is challenging due to the highly dense urban environment restricting available space. However, ESRs presents an opportunity for traditional generation to pair with storage to either repower or replace older, less efficient, and dirtier units. Moreover, ESRs will perform an important function to balance intermittent renewable resources. This is especially relevant in addressing important public policy priorities such as making energy affordable for all consumers, improving local air quality, increasing and strengthening the resiliency of the electric system, and reducing peak load.

In its Tariff Filing, the NYISO claims that its revised tariff language will “ensure, to the extent possible, comparable treatment of Energy Storage Resources and other participants in the NYISO-administered markets.”²⁸ It also alleges that its “proposed revisions remove barriers to entry for the participation of Energy Storage Resources.”²⁹ However, several key aspects of the NYISO’s proposed market rules are fatally flawed and have the potential to paralyze this nascent market in New York, thus delaying achievement of important Federal, State and City policy

²⁶ NYISO, Load & Capacity Data Report (April 2018).

²⁷ NYPSC Energy Storage Policy Order at 2.

²⁸ NYISO Tariff Filing at 8.

²⁹ *Id.*

objectives. The City's Protest specifically objects to the application of the NYISO's BSM Rules and the NYISO's prohibition of dual participation to ESRs.

A. The Commission Should Reject Applying the NYISO's BSM Rules to ESRs as Unjust and Unreasonable

The NYISO's Tariff Filing creates a market design for ESR participation in the NYISO-administered capacity market that qualifies the ESR as "an Installed Capacity Supplier if it satisfies the existing qualification requirements for a Generator *as well as meets* the Energy Storage Resource-specific requirements [described in the Tariff Filing]."³⁰ Thus, the qualification requirements for ESRs are actually more rigorous and onerous than that of a traditional generator. Specifically, the NYISO proposes to apply the current BSM Rules to entry of all new ESRs that are larger than 2 MW, and also proposes to revise its BSM Rules applicable to all generators (not only ESR) to allow for BSM of resources under 2 MW (discussed *infra*).³¹ The City submits that both proposals are unjust and unreasonable and inconsistent with the Commission's directive to remove market barriers for ESRs.

Subjecting all ESRs to the NYISO's BSM Rules is overly broad and inappropriately mitigates resources that lack the incentive and ability to exercise market power. The Commission has established a minimum offer price rule policy that provides that buyer-side market power mitigation rules are intended to address "market power exhibited by certain entities seeking to lower capacity market prices."³² Supply-side mitigation rules apply to resources that have the

³⁰ *Id.* at 43 (emphasis added).

³¹ *Id.* at 51.

³² Renewables/Self-Supply Complaint Order, 153 FERC ¶ 61,022 at P 10 (2015) ("RE Exemption Order"). *See also Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139, at P 2, *order on reh'g, clarification, and compliance*, 152 FERC ¶ 61,110 (2015).

ability to (i) withhold capacity to affect prices, and (ii) benefit from that action.³³ The NYISO has failed to present any evidence or analysis to determine whether, and under what circumstances, ESRs may do either of these, and whether mitigation is a barrier to entry.

In blindly applying the BSM Rules to ESRs, the NYISO has foregone performing any due diligence in determining whether these types of resources are incentivized, or even have the physical and/or operational capability, to actually exercise market power and suppress market prices – which is the intent of the BSM Rules. Contrary to the Commission’s Order No. 841 directives to “remove barriers,” applying BSM Rules as a default market design without understanding the impacts on ESR market entry creates an unnecessary barrier.

Applying mitigation to a resource can significantly hinder the development process and impact project economics and financing. Additionally, subjecting resources to the BSM Rules also subjects the resource to the NYISO’s Class Year Process – which is onerous and takes years to navigate through, thus, delaying resource entry and operation.³⁴ Entrenching ESRs that are small in size in the NYISO’s Class Year Process would require a project to wait (potentially years) for its mitigation determination until after numerous phases of system impact studies are completed. This would not only potentially increase the administrative burden placed on the

³³ See, Docket No. EL16-92-000, 158 FERC ¶61,137 at PP 30-34 (2017) (Demand Response BSM Exemption Order); RE Exemption Order at P 49.

³⁴ As an illustrative example, the NYISO’s 2017 Class Year began on March 1, 2017 and is expected to continue until at least May 2019, which is more than two years after it began. See, NYISO Consumer Interest Liaison Weekly Summary, January 7 – January 11, 2019, p. 4, available at:
https://www.nyiso.com/documents/20142/4547434/End_Use_Summary.pdf/23de8f0d-21e7-78b5-33ab-619fcb27c911.

NYISO, but may also serve to further delay the Class Year Process because more resources are involved.

The Commission has recognized that classes of resources should be exempt from mitigation. In Docket No. EL16-92, the Commission exempted all resources that participate in the NYISO's demand response program from the BSM Rules.³⁵ The Commission ruled that the NYISO's Services Tariff was unjust, unreasonable, and unduly discriminatory or preferential under Section 206 of the FPA because it applied the BSM Rules to Special Case Resources ("SCRs"), "which have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices."³⁶

Significantly, the Commission stated that this finding is consistent with its Minimum Offer Pricing Rule policy because "buyer-side market power mitigation rules are intended to address 'market power exhibited by certain entities seeking to lower capacity market prices.'"³⁷ The Commission found that SCRs "have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices" because "they are not effective tools of price suppression."³⁸ The Commission also found that payments received from dual participation in retail-level demand response programs do not give these resources the incentive or ability to exercise buyer-side market power, and SCRs are not effective tools of price suppression.³⁹

The same reasoning used by the Commission to exempt SCRs from the NYISO's BSM Rules applies with equal force to ESRs. It is likely that many of the ESRs to enter the NYISO's

³⁵ See Demand Response BSM Exemption Order.

³⁶ *Id.* at P 30.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at P 31.

capacity market in the foreseeable future would likely be 2 MW or less. The Commission recognized this notion in Order No. 841 wherein it stated that “[e]lectric storage resources are generally smaller than tradition generation resources, and are often in the 100 kW to 1 MW range.”⁴⁰ Moreover, subjecting these small resources to the BSM Rules would be administratively burdensome for the NYISO and would create unreasonable delays to project implementation.

If, *arguendo*, the Commission declines to exempt ESRs from the BSM Rules in total, the City supports a limited exemption from mitigation for ESRs that are less than 20 MW from BSM Rules.⁴¹ Alternatively, and as set forth in more detail by the NY State Entities, the Commission could also exempt ESRs entering the market up to an annual megawatt cap. Such limited exemption has been used by the Commission in the past when granting a limited exemption for renewable and self-supply resources.⁴² The Commission held that such limited exemption was justified because these resources “derive limited or no benefit from lower prices,” and “have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices....”⁴³

Minimally, resources that are 2 MW or less should be exempt from the BSM Rules, consistent with the NYISO’s current Services Tariff. The NYISO stated that it removed Category III facilities as a “housekeeping” revision because the NYISO believed at the time that “it was ‘no longer possible for a proposed new project to be a Category III facility.’”⁴⁴ It is inappropriate for the

⁴⁰ Order No. 841 at P 271, fn. 323.

⁴¹ See Protest of the NY State Entities that also proposes to exempt ESRs smaller than 20 MW from mitigation.

⁴² See RE Exemption Order.

⁴³ *Id.* at P 10.

⁴⁴ NYISO Tariff Filing at 52.

NYISO to use this process to expand mitigation to electric storage and distributed energy resources that are less than 2 MW that otherwise would be exempt from the BSM test but for the proposed rules that the Commission directed to be designed to enable ESR market participation. Such a proposal also interferes with the State policy objectives of promoting distributed energy resource market development for the deployment of smaller resources on distribution networks – which is especially relevant in New York City.

The City submits that creating a market participation model that encourages market entry and competition is important. A one-size-fits-all approach for market participation is not appropriate, does not further Order No. 841, and contravenes Commission precedent. ESRs have the potential to assist during critical peak periods, relieve system constraints and can be integrated into the NYISO’s system planning if such resources are able to participate in the wholesale market. Application of the NYISO’s BSM rules limit full ESR participation and interfere with Federal, State, and City policy objectives, making them unjust and unreasonable.

B. Extension of the BSM Rules To All Resources 2 MW and Under Through the Reinstatement of “Category III” Examined Facility Provisions is Beyond the Scope of this Compliance Filing and Should be Rejected.

The NYISO’s current BSM Rules would apply to the entry of new ESRs that are larger than 2 MW.⁴⁵ In the Tariff Filing, the NYISO proposes a change to its current mitigation rules to apply BSM to *all resources* 2 MW or less in size.⁴⁶ As a procedural matter, the NYISO’s proposed market change goes well beyond the Commission’s directives in Order No. 841 for the NYISO to adopt “reforms to remove barriers to the participation” of ESRs.⁴⁷ A substantial market rule

⁴⁵ *Id.* at 51.

⁴⁶ *Id.*

⁴⁷ Order No. 841 at P 1.

change and revision to the NYISO's Tariffs must be submitted to the Commission through a FPA Section 205 filing ("Section 205 Filing"), not a compliance filing.

Importantly, the NYISO OATT provides for a specific process when amending a tariff provision previously accepted by the Commission, which requires a stakeholder vote and approval by the NYISO Management Committee and Board of Directors prior to submitting a Section 205 filing to the Commission.⁴⁸ However, compliance filings are not required to go through the same process, and do not require stakeholder vote. Thus, by including the expansion of the NYISO's BSM Rules (which apply to all generators and are not limited to ESRs) in its compliance filing, the NYISO has sidestepped a very important aspect of the stakeholder process in advancing this proposed tariff change which was met with discourse and controversy in the working groups.

The Commission "has long established that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes, and the Commission's focus in reviewing them is whether they comply with the Commission's previously stated directives."⁴⁹ In reviewing prior compliance filings that included changes it did not expressly direct, the Commission has stated that "market-based rate tariff revisions that are beyond the scope of a Commission-directed compliance filing will be *deemed automatically rejected at the time of filing.*"⁵⁰

In Order No. 841, the Commission provided that each RTO or ISO could "consider whether it is appropriate to update and/or apply existing market power mitigation processes to electric storage resources to alleviate market power concerns," but only "*to the extent that market power*

⁴⁸ OATT Section 2.10.

⁴⁹ PJM Interconnection, LLC, 119 ¶ FERC 61,179 at P 12 (2017).

⁵⁰ *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 60 (2005) (emphasis added).

concerns arise as a result of electric storage resources de-rating capacity to provide capacity or other services.”⁵¹ Here, the NYISO repeatedly stated in working group meetings that they did not have any evidence to show that ESRs will or have the ability to exert market power. Despite such lack of evidence, the NYISO is proposing to create a significant barrier for these smaller ESR resources for the sake of consistency “across all generation types.”⁵² Such rationale falls squarely outside the directives of the Commission to develop provisions for “specific types of resources when those resources have unique physical and operational characteristics or other attributes that warrant distinctive treatment from other market participants” as well as “help facilitate the participation of electric storage resources in the RTO/ISO markets.”⁵³

Importantly, ESRs that are 2 MW and under *can* be fully incorporated into the markets without being subject to the BSM Rules. If such changes were in fact absolutely necessary, the NYISO should have presented evidence supporting such assertion. However it chose not to. Therefore, the NYISO’s proposed tariff revisions are not necessary to effectively implement the NYISO’s ESR proposal and do not follow any prior Commission precedent for allowing limited, but necessary, additional revisions not directed by the Commission.⁵⁴ Accordingly, the City respectfully requests that the Commission direct the NYISO to file a Section 205 filing to address the raised issue of expanding its BSM Rules.

⁵¹ Order No. 841 at 67-68.

⁵² NYISO Tariff Filing at 51.

⁵³ Order No. 841 at P 3.

⁵⁴ In its Tariff Filing, the NYISO concedes that its proposal exceeds the scope of Order No. 841 by relying on the Commission’s holding in *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh ’g*, 127 FERC ¶ 61,042 (2009) wherein the Commission accepted certain proposed tariff revisions that were not explicitly directed in the compliance filing because they were “limited, but necessary.”

C. The NYISO’s ESR Market Rules Should Include Provisions That Enable Dual Participation Or, Alternatively, Not Prohibit Dual Participation

While the NYISO’s proposed tariff provisions do not include rules for ESR participation in both the retail and wholesale markets, certain aspects of the NYISO’s proposed market design (e.g., NYISO-managed state of charge to receive capacity payments) forecloses an ESRs ability to perform outside of the wholesale markets. Additionally, in its Tariff Filing the NYISO affirmatively stated that “Energy Storage Resources will not be permitted to aggregate or engage in dual participation” until the NYISO submits additional tariff revisions as part of a future Section 205 filing regarding distributed energy resources.⁵⁵ The NYISO’s Tariff Filing fails to address whether, and to what extent, precluding ESRs from dual participation is a barrier to market entry consistent with the Commission’s directives.⁵⁶

As ESRs are still a nascent technology, technology capital costs are slowly declining and investment likely requires revenue streams from both the wholesale and retail markets in order to be considered economic. Restricting market entry to only those ESRs that are solely funded through wholesale revenue streams is unjust and unreasonable. State policy is mandating ESR integration to serve distribution utility system needs through direct procurement and non-wires solutions. Precluding dual participation hampers competition as ESR units in New York State will not have access to value streams from both markets.

⁵⁵ NYISO Tariff Filing at 55.

⁵⁶ Importantly, the Commission has acknowledged “that market design and rules need not be identical among the regions and may instead reflect the unique characteristics of the markets as necessary,” and what may be appropriate for one control area “is not necessarily appropriate for NYISO”) (citation omitted). RE Exemption Order at P 78.

In Order No. 841, the Commission specifically addressed the potential for dual participation and did not preclude including such rules in a region's market design. The Commission stated:

“We are not persuaded by commenters who argue that developing metering practices that distinguish between wholesale and retail activity is impractically complex . . . retail metering infrastructure, which is subject to state jurisdiction, may be able to work in concert with the RTO/ISO requirements to lower the overall metering costs for electric storage resources. Therefore, we provide each RTO/ISO with the flexibility to propose in its compliance filing other reasonable metering solutions that may help reduce costs for developers.”⁵⁷

Here, the Commission recognized the likelihood of ESRs participating in both markets and encouraged exploration of ways to optimize operational costs.

The fact that the NYISO stated that it intends to address dual participation as part of its potential market design for distributed energy resources is not persuasive. It is unclear when, and if, the NYISO will ever make such a 205 filing and, if it does, implementation of dual participation rules would be into the future well past implementation of the ESR Tariff Filing pending before the Commission. Thus, the NYISO's lack of inclusion of dual participation rules at this time – which is wholly inappropriate – will only further stifle this burgeoning market and act as a barrier to entry for ESRs.

Importantly, the NYISO allows demand response resources to participate in both the wholesale and retail markets. The Commission has acknowledged that wholesale- and retail-level demand response programs “complement each other [but] they serve different purposes, provide different benefits, and compensate distinctly different services.”⁵⁸ ESR participation in both

⁵⁷ Order No. 841 at P 323.

⁵⁸ *New York Public Service Commission*, 158 FERC ¶ 61,137 (2017) at P 15.

markets is similarly complementary, but distinct. For example, at the wholesale level, ESRs provide bulk transmission reliability, but on the retail level provide load reduction at the network level in New York City. Thus, it is unjust and unreasonable to force ESRs to select participation in only one market when they can provide value and distinct services to both.

By prohibiting ESR dual participation in the wholesale and retail markets without articulating any valid policy or administrative reason for doing so, the NYISO is acting in opposition to Order No. 841's directive that the RTOs and ISOs must take actions to facilitate ESR market participation. Thus, the City respectfully requests that the Commission order the NYISO to make a subsequent compliance filing that sets forth a structure for enabling dual participation for ESRs within a reasonable period following the Commission's determination that preserves the NYISO's requested May 1, 2020 market implementation date.

III. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Commission reject the NYISO's Tariff Filing as proposed, and direct the NYISO to submit revised tariff amendments consistent with the modifications discussed herein following a timeline that enables implementation of ESR market rules by May 1, 2020.

Respectfully submitted,

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Dated: February 7, 2019
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Respectfully submitted,

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Dated: February 7, 2019
New York, New York

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Protest of the City of New York has been served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Albany, New York, this 7th day of February, 2019

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