UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	**)** **)**	**Docket No. ER19-467-000**

COMMENTS OF THE INSTITUTE FOR POLICY INTEGRITY AT NEW YORK UNIVERSITY SCHOOL OF LAW

Pursuant to the Federal Energy Regulatory Commission's ("Commission" or "FERC") December 14, 2018 Notice of Extension of Time,[1] the Institute for Policy Integrity at New York University School of Law ("Policy Integrity")[2] hereby files these comments regarding the New York System Operator, Inc. ("NYISO") filing[3] to revise its open access transmission tariff in compliance with Order No. 841, *Electric Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*.[4]

Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity staff have published reports and academic articles regarding the participation and compensation of energy storage resources.[5] Policy Integrity has engaged in energy-storage-related proceedings at FERC and before the New York

[1] Notice of Extension of Time, Docket Nos. ER19-460-000, ER19-462-000, ER19-465-000, ER19-467-000, ER19-468-000, ER19-469-000, ER19-470-000 (Dec. 14, 2018).
[2] On February 5, 2019, Policy Integrity filed a doc-less motion to intervene. No part of this document purports to present New York University School of Law's views, if any.
[3] New York Independent System Operator, Inc., Compliance Filing and Request for Extension of Time of Effective Date; Docket Nos. RM16-23-000, AD16-20-000, ER19-467-000 (Dec. 3, 2018) ("NYISO Compliance Filing").
[4] *Electric Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (Feb. 15, 2018) ("Order No. 841").
[5] *See e.g.,* Richard L. Revesz & Burcin Unel, *Managing the Future of the Electricity Grid: Energy Storage and Greenhouse Gas Emissions*, 42 HARV. ENVTL. L. REV. 139 (2018); Madison Condon, Richard Revesz & Burcin Unel, *Managing the Future of Energy Storage*, Institute for Policy Integrity (Apr. 24, 2018), available at http://policyintegrity.org/publications/detail/managing-the-future-of-energy-storage ("Energy Storage Report").

Public Service Commission ("PSC").[6]

In these comments, Policy Integrity makes three limited points:

- NYISO's compliance filing appears to impose a categorical prohibition on the participation of energy storage resources in the NYISO-administered wholesale markets if those resources also participate in a retail compensation program;
- Prohibiting dual participation of energy storage resources would be inconsistent with just and reasonable rates and the requirements of Order No. 841; and
- The Commission should require NYISO to expeditiously move to facilitate dual participation of energy storage resources.

I. NYISO's Compliance Filing Appears to Prohibit All Dual Market Participation

NYISO's compliance filing appears to impose a barrier on the participation of energy storage resources in the NYISO-administered wholesale markets if those resources also participate in a New York State retail compensation program. NYISO's filing states that "Energy Storage Resources *will not be permitted* to . . . engage in dual participation" in wholesale and retail markets "until [expected future] tariff changes permitting [that] market concept[] become effective."[7] The filing also explains that stakeholders had requested that "Energy Storage Resources be permitted to participate in both the wholesale and retail markets," and that NYISO "declined to address these proposed changes" in this filing.[8]

There is ambiguity in NYISO's discussion of this issue. The potentially problematic language is in a section describing the participation of energy storage resources in the NYISO-administered capacity market, under the subheading "Additional Capacity Requirements."[9] Yet,

[6] Institute for Policy Integrity, Comments on Proposed Rulemaking for Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators, Docket Nos. RM16-23-000, AD16-20-000 (Jan. 30, 2017), http://policyintegrity.org/documents/FERC_DER_Energy_Storage_Comments.pdf.; N.Y. Pub. Serv. Comm'n, In the Matter of Energy Storage Deployment Program, Case 18-E-0130, http://www3.dps.ny.gov/W/PSCWeb.nsf/All/8A5F3592472A270C8525808800517BDD?OpenDocument/.

[7] NYISO Compliance Filing at 55 (emphasis added).

[8] *Id.* at 11.

[9] *Id.* at 42 ("VII. Requirements for Energy Storage Resources' Participation in NYISO-Administered Capacity Markets"); *id.* at 54 ("G. Additional Capacity Requirements")

NYISO's discussion of the participation restrictions uses categorical language that is not particular to participation in the capacity market. Moreover, the NYISO statement is in a paragraph that discusses requirements that are not specific to capacity market participation,[10] which suggests that NYISO did not intent to limit its dual participation discussion to capacity market requirements.

Moreover, NYISO's filing is ambiguous regarding what it considers to be energy storage participation in retail markets. The New York PSC has developed or is in the process of developing different programs that provide payments to energy storage resources. The New York PSC has implemented an innovative approach called "value stacking," which provides unbundled compensation for a number of services that energy storage resources can deliver.[11] This includes retail-specific services such as reducing the need for distribution-level infrastructure investment, reducing distribution-level congestion; and reducing air pollution emissions, but not certain wholesale services such as ancillary services.[12] In addition, the New York PSC has directed the New York State Energy Research and Development Corporation to develop a "market acceleration bridge incentive" program that would provide payments to

[10] *Id.* at 54-55 (discussing a requirement that energy storage resources provide real-time energy level signals to NYISO in a section of the tariff covering provision of data by market participants).

[11] N.Y. Pub. Serv. Comm'n, Order on Phase One Value of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters, Case Nos. 15-E-0751 & 15-E-0082 (2017), http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A04D9EF3-9779-477E-9D98-43C7B060DAEB}. The PSC is currently in the process of developing the second phase of its value of distributed energy resources proceeding. *See* N.Y. Pub. Serv. Comm'n, Notice of Phase Two Organizational Conference, Case No. 15-E-0751 (2017), http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D345826E-8D0B-4C9B-8B00-B6C70251F89F}. While the value stacking approach was initially available only to energy storage resources that are paired to certain renewable resources, the PSC has expanded eligibility to include stand-alone energy storage systems smaller than 5 MW. N.Y. Pub. Serv. Comm'n, Order on Value Stack Eligibility Expansion and Other Matters at 16, Case Nos. 15-E-0751, 15-E-0082 (Sept. 12, 2018), http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B4E6C68C3-1A3E-4252-8953-96B532AEB1C3%7D.

[12] *See* Energy Storage Report at 15 (describing value stack components).

energy storage resources in order to accelerate the decline in technology and deployment costs.[13] NYISO's general statements in it compliance filing fail to clearly specify which, if any, of these programs and value streams would impose a limit on wholesale market participation.

As discussed below, a categorical ban on dual participation would violate Order No. 841. The Commission should, therefore, direct NYISO to clarify that it is not imposing an indefinite bar on wholesale market participation for resources that also receive retail compensation for services not already compensated by the NYISO-administered markets. The Commission should direct NYISO to implement tariff changes permitting such dual participation under a defined and swift timeline.

II. Prohibiting Wholesale Market Participation of Energy Storage Resources that Receive Compensation for Different Services from Retail Programs Would Reduce Market Efficiency and Violate Order No. 841

Order No. 841 requires that NYISO revise its tariff to allow energy storage resources to be compensated for all energy, capacity, and ancillary services that they are technically capable of providing.[14] Energy storage resources are technically capable of providing benefits to the wholesale electric system while also benefiting the retail electric system.[15] Yet, NYISO's compliance filing would appear to create a barrier to participation for resources that are technically capable of providing wholesale energy, capacity, and ancillary services merely because those resources participate in a retail program. Such barriers are inconsistent with Order No. 841. In fact, in establishing requirements for metering and accounting, Order No. 841

[13] N.Y. Pub. Serv. Comm., Order Establishing Energy Storage Goal and Deployment Policy at 65-67, Case 18-3-0130 (Dec. 13, 2018), http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7bFDE2C318-277F-4701-B7D6-C70FCE0C6266%7d ("PSC Energy Storage Order").

[14] Order No. 841 at P 4 (RTO tariffs must ensure that a resource using the participation model for electric storage resources is eligible to provide all capacity, energy, and ancillary services that it is technically capable of providing in the RTO/ISO markets").

[15] *See* Energy Storage Report at 14.

specifically discussed the potential for energy storage resources to participate in both retail and wholesale markets, and rejected comments that called for limits to dual participation.[16] The order justified that rejection by stating that "it is possible for electric storage resources that are selling retail services also to be technically capable of providing wholesale services, and it would adversely affect competition in the RTO/ISO markets if these technically capable resources were excluded from participation."[17] NYISO's proposed tariff would limit technically capable energy storage resources from participating in wholesale markets for the very reason that the Commission rejected such limits in Order No. 841.

In issuing Order No. 841, the Commission exercised its authority under Section 206 of the Federal Power Act to ensure that RTO/ISO markets produce just and reasonable rates.[18] The Commission determined that existing market rules are unjust and reasonable because they permit barriers to energy storage participation in wholesale markets that adversely affect competition and, as a result, reduce market efficiency.[19] Dual participation limits conflict with the Commission's attempt to enhance efficiency by enabling broad wholesale market participation of energy storage resources. Ensuring that energy storage resources are able to receive compensation for all the values they are technically able to provide to the grid is essential for the efficiency of the markets.[20] Conversely, prohibiting energy storage resources from receiving compensation for the services they offer the wholesale system merely because they receive

[16] Order No. 841 at P 320 ("We are not persuaded by APPA/NRECA's and TAPS' suggestion that electric storage resources must choose to participate in either wholesale or retail markets due to the complexity of the metering and accounting practices.")
[17] *Id*.
[18] 16 U.S.C. § 824e; Order No. 841 at P 1.
[19] *Id.* ("[W]e find that existing 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"); *id.* at P 2 ("restriction on competition can reduce the efficiency of the RTO/ISO markets").
[20] Energy Storage Report at 14.

compensation for separate retail services would reduce the efficiency of the Commission-regulated markets. Prohibiting dual participation would force resources to choose between compensation for retail services that the wholesale market does not value (e.g., avoided distribution investment) or compensation for services that the retail market does not value (e.g., ancillary services). Energy storage developers that choose retail program participation would have no incentive to design and operate their resources in ways that provide valuable wholesale market services such as ancillary services even when doing so is technically possible and economically valuable. As a result, participation barriers such as dual participation limits reduce market efficiency, leading to unjust and unreasonable rates.[21]

Because an indefinite prohibition on dual participation would erect barriers to the provision of wholesale services by resources that sell separate and distinct retail services, that prohibition would adversely affect competition in the NYISO market and reduce wholesale market efficiency. As a result, such a prohibition would lead to unjust and unreasonable rates in violation of the Federal Power Act, and conflict with the requirements of Order No. 841.

III. The Commission Should Direct NYISO to Expeditiously Move to Facilitate Dual Market Participation

NYISO's compliance filing suggests that it is "evaluating" and "exploring concepts" such as dual market participation that it may incorporate into a separate Section 205 filing.[22] But, NYISO has not committed to implementing such concepts, let alone provided a timeline for doing so. In fact, NYISO indicates that any dual market participation rules will have to wait for development of broader distributed energy resource market design changes, which include complex topics

[21] Order No. 841 at P 20 ("barriers reduce competition and market efficiency by inhibiting developers' incentives to design their electric storage resources to provide all capacity, energy, *and ancillary services* that these resources could otherwise provide. We find that better integration of electric storage resources into the RTO/ISO markets is necessary to . . . ensure that these markets produce just and reasonable rates.") (emphasis added).
[22] NYISO Compliance Filing at 12, 55.

such as resource aggregation.[23]

NYISO has not explained why it was unable to incorporate dual market participation into its compliance filing. One complex issue with resource participation in both the wholesale and retail markets is the need to limit double payment to and by energy storage resources for the same services. Providing full, but not double compensation for energy storage resources is reasonable and important for ensuring market efficiency.[24] Doing so may necessitate the development of accounting rules in coordination with the New York PSC.

However, the need for coordination should not serve as a justification for a de facto long-term prohibition on dual market participation. The Commission already expected RTOs/ISOs to coordinate with state commissions *as part of the development of Order No. 841 compliance filings* in order to address the "complex, but . . . feasible" metering and accounting needed to "distinguish between wholesale and retail activity" and facilitate wholesale market participation of distribution-connected energy storage.[25] The Commission provided RTOs/ISOs with an extended compliance period to do so.[26] Moreover, the New York PSC has already made clear that storage resources should receive retail compensation only for "separate and distinct value" that those resources provide beyond the value compensated by the wholesale market.[27] According to the New York PSC, "the same service [must] only [be] counted and compensated once to avoid double compensation.[28] Given the New York PSC's requirement that the retail programs limit double compensation, NYISO and the New York PSC should be able to establish

[23] *Id.* at 55.
[24] Order No. 841 at P 321; Energy Storage Report at 17.
[25] *Id.* at PP 318-19; *id.* at 319 ("We recognize that it may be beneficial for each RTO/ISO to coordinate accounting requirements in cooperation with the distribution utilities and relevant electric retail regulatory authorities in its footprint to help identify workable accounting solutions for distribution-interconnected or behind-the-meter electric storage resources to participate in the RTO/ISO markets").
[26] *Id.* at P 343.
[27] PSC Energy Storage Order at 100.
[28] *Id.*

a coordinated approach that can be implemented by the time NYISO's energy storage tariff revisions are implemented.[29] The complexities of dual market participation and the need for coordination should not serve as an excuse to further delay full implementation of the requirements of Order No. 841.

The Commission should direct NYISO to expeditiously develop, in coordination with the New York PSC, any needed accounting rules to facilitate dual participation.

Respectfully submitted,

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[29] Order No. 841 at P 343 (establishing an implementation timeframe 365 days from compliance filing); NYISO Compliance Filing at 64-(requesting an extended implementation timeframe until at least May 1, 2020).