**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**


**MOTION FOR LEAVE TO COMMENT OUT OF TIME AND COMMENTS OF PUBLIC INTEREST ORGANIZATIONS**

Pursuant to Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission\(^1\) (“Commission” or “FERC”), the Sustainable FERC Project (“SFP”) and Natural Resources Defense Council (“NRDC”) (collectively, “Public Interest Organizations” or “PIOs”) respectfully submit this Motion for Leave to Comment Out of Time and Comments regarding New York Independent System Operator, Inc.’s (“NYISO”) November 19, 2021 response to Commission Staff’s deficiency letter in the above-captioned docket, which concerns NYISO’s proposed tariff revisions in compliance with Order No. 2222\(^2\). PIOs and Advanced Energy Economy (“Joint Protestors”) filed Comments and a Protest on August 23, 2021 regarding the entirety of NYISO’s proposals to comply with Order No. 2222; we incorporate those earlier-filed Comments and Protest by reference in these Comments and Protest\(^3\). Additionally, Joint Protestors and the City of New York filed a Protest on August 23, 2021 addressing treatment of Energy Efficiency\(^4\). The Comments below relate solely to NYISO’s responses to Commission Staff’s deficiency letter\(^5\).

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\(^1\) 18 C.F.R. §§ 385.212 and 385.212


\(^3\) Comments and Protest of Advanced Energy Economy and the Sustainable FERC Project, filed August 23, 2021 in Docket No. ER21-2460-000, FERC Accession No. 20210823-5226 (the “Joint Protest”).


I. **Motion for Leave to Answer Out of Time**

Pursuant to Rule 212 of the Commission’s rules of practice and procedure, PIOs respectfully request that the Commission allow PIOs to submit these comments out of time. The Commission’s Notice of Filing established a timely comment date of Friday, December 10, 2021.

Good cause exists to allow PIOs to file these comments. PIOs have participated in the dockets related to Order 2222 and NYISO’s compliance proceeding since their earliest states. These comments aim to provide additional information and clarification of PIOs’ earlier comments in light of clarifications provided by NYISO. PIOs submit these comments in the hope they will aid the Commission in its decision making process. PIOs accept the record as it stands, and the Commission has not issued any orders yet in this proceeding. Given this, no parties will be materially harmed by the timing of PIOs’ comments. Therefore, granting this motion to allow PIOs to submit these comments out of time will not delay the proceeding or prejudice any other party.

II. **Introduction**

The Joint Protest lists a number of issues where NYISO’s Original Filing fails to meet the requirements set forth in Order 2222. Questions relevant to many of those issues were raised in FERC staff’s Deficiency Letter. Clarifications or modifications provided in the Deficiency Response partially resolve two of those issues:

- NYISO’s elaboration of the process proposed to identify double counting appears reasonable in substance. However, the proposed process does not provide for adequate

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6 *Compliance Filing and Request for Flexible Effective Date*, filed July 19, 2021 in Dockets No. RM18-9-000 and ER21-2460-000. (“Original Filing”)
7 See Joint Protest at 2-5.
8 *Reference; Compliance Filing for Order No. 2222*, issued October 1, 2021 in Docket No. ER21-2460-000. (“Deficiency Letter”)
9 NYISO Response at 32-33.
stakeholder or regulatory review, and leaves key conditions for participation out of NYISO’s Tariff.

- NYISO’s proposed criteria for evaluating Transmission Nodes for DER aggregation purposes are reasonable, provided that the indicated studies are carried out with a level of transparency and stakeholder participation equivalent to other transmission study processes. Additionally, NYISO’s proposed Transmission Node evaluation process provides an opportunity to resolve the barriers created by the proposed Capacity Resource Interconnection Service (“CRIS”) requirement.

However, several of the shortcomings in the Original Filing persist or worsen upon the clarification provided in the Deficiency Response:

- The participation of heterogeneous aggregations remains limited by the least capable resource within the aggregation, contradicting Order 2222 and preventing heterogeneous aggregations from offering all the services they are technically capable of providing;

- The proposed distribution utility review process is unsupported by evidence, is not compliant with Order No. 2222, and creates opportunity for anticompetitive discrimination and a new barrier to participation; and

- The requirement for all DERs to obtain CRIS awards is unnecessary, burdensome and does not comply with Order 2222 because it prohibits DERs from providing capacity they are technically capable of providing. Further, NYISO’s clarification of their process for identifying Transmission Nodes demonstrates that a viable alternative exists.

We further address each of the above issues in the body of this filing.

III. Comments and Protest

a. Deficiency Letter Topic III.C: Double Counting of Services

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10 NYISO Response at 34-36.
Order 2222 states that it is “appropriate for RTOs/ISOs to place narrowly designed restrictions on the RTO/ISO market participation of distributed energy resources through aggregations, if necessary to prevent double counting of services.”\textsuperscript{11} The Joint Protest argues that the Original Filing exceeds this standard by proposing vague and possibly redundant rules regarding dual participation.\textsuperscript{12} The Deficiency Response clarifies that “The NYISO and Distribution Utilities will work cooperatively to identify retail market services and programs that are the same as the services DER are eligible to provide in the wholesale markets…”\textsuperscript{13} and that NYISO intends to publicly post the resulting matrix.

PIOs appreciate NYISO’s clarification, and agree that a process similar to what they describe has potential to accurately identify an appropriately narrow set of conditions where dual-participation creates risk of double-counting. However, NYISO proposes a Distribution Utility led process with no opportunity for review of the results by the Commission or stakeholders more broadly.

NYISO’s proposed listing of which specific retail programs foreclose participation in specific wholesale markets easily meets FERC’s Rule of Reason test for classifications that must be on file with the Commission. Under the “rule of reason,” public utilities must file practices “that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”\textsuperscript{14} As the classifications in question determine eligibility for markets, they significantly affect rates. That NYISO proposes to post the classifications on their web site establishes that they are realistically susceptible of specification. The potential diversity of retail programs, the existence of retail programs in New York that are similar to but

\textsuperscript{11} Order 2222 at p 161.
\textsuperscript{12} Joint Protest at 18-19.
\textsuperscript{13} Deficiency Response at 33.
\textsuperscript{14} *Tri-State Generation and Transmission Ass’n, Inc.*, 170 FERC ¶ 61,223, at P 49 & n.89 (2020) (quoting *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985); citing *Demand Response Coal. v. PJM Interconnection*, L.L.C., 143 FERC ¶ 61,061, at P 17 (2013)).
distinct from wholesale products,\textsuperscript{15} and the diversity of DER use cases all argue against the classifications being so generally understood in any contractual arrangement as to render recitation superfluous.

To comply with Rule of Reason requirements and eliminate the potential for arbitrary or anticompetitive outcomes, PIOs respectfully request that the Commission accept NYISO’s proposed procedure to identify double counting risks, but also require that NYISO amend its Tariff to include the resulting determinations. Such an approach creates little additional administrative burden while guaranteeing that all parties have an opportunity to request FERC review of determinations they consider unreasonably inaccurate or unduly discriminatory.

b. **Deficiency Letter Topic III.A: Participation Model**

Order 2222 requires ISOs to allow heterogenous DER aggregations.\textsuperscript{16} It also finds that resources that are not be able to provide certain services on their own may become capable when aggregated with complementary resources.\textsuperscript{17} The Original Filing proposes that “an Aggregation may only qualify to offer the Ancillary Services that all individual facilities in the Aggregation are qualified to provide.”\textsuperscript{18} The Joint Protest argued that this approach would prevent Aggregations from providing services that they are technically capable of providing.\textsuperscript{19} The Deficiency Letter asks a series of questions on this topic.\textsuperscript{20}

The Deficiency Response does not attempt to rebut that their proposed tariff will prevent heterogenous aggregations from providing all the services they are technically capable of providing.\textsuperscript{21} NYISO instead argues that its current rules for homogenous aggregations are superior to heterogenous

\textsuperscript{15} See e.g., N.Y. Pub. Serv. Comm’n et. al. v. N.Y. Indep. Sys. Operator, Inc 174 FERC ¶ 61,110 at 10, noting that a paper hearing was required to identify which New York demand response programs address “solely distribution-level” needs.
\textsuperscript{16} Order 2222 at P 142.
\textsuperscript{17} Id.
\textsuperscript{18} Original Filing at 16.
\textsuperscript{19} Joint Protest at 6-9.
\textsuperscript{20} Deficiency Letter Section III.A
\textsuperscript{21} Deficiency Response at 8-14.
aggregations. NYISO further argues that aggregators can avoid some of the shortcomings of poorly
fitting participation models by “optimiz[ing]” how they enroll their resources in various aggregations.23

These arguments do not make NYISO’s proposed aggregation model compliant with Order 2222.
Rather, NYISO seeks to substitute its judgement for the Commission’s on the value of heterogenous
aggregations. NYISO’s rules also contradict the Commission’s finding that Aggregations may have
capabilities beyond the individual components: if an Aggregation is only eligible to provide services that
each individual resource can provide, there is no opportunity to become eligible by combining
complementary resources. NYISO’s arguments that market participants can find a financially optimal
way to participate is beside the point, as it says nothing to the capabilities lost in that optimization.

NYISO also replies that allowing heterogenous aggregations would unjustly relieve some
resources from their dispatch obligations if they aggregate with non-dispatchable resources.24 This is a
problem purely of NYISO’s own making, and flows directly from NYISO’s decision to ignore Order
2222’s directive to develop heterogenous aggregations that “ensur[e] that complementary resources,
including those with different physical and operational characteristics, can meet qualification and
performance requirements…”25 Contrary to this requirement, NYISO proposes to continue its existing
practice of aggregations under technology-specific models, rather than following Order 2222’s directive
to implement a participation model that “that accommodate[s] the physical and operational characteristics
of each distributed energy resource aggregation.”26 This makes it no surprise that NYISO’s approach fails
to accurately represent the dispatch characteristics of some aggregations. It is not an impossible feat to
design a participation model that models the characteristics of mixed aggregations and allows for faithful
implementation of energy market must-offer and dispatch requirements27. NYISO concedes this is not

22 Id at 9.
23 Id at 10, 13.
24 Id. at 10.
25 Order 2222 at 142, emphasis added.
26 Id. at 6.
27 See Id. at 143.
possible under their current participation model; that merely demonstrates that the current model does not meet Order 2222 requirements.

c. Deficiency Letter Topic VI.A: Role of Distribution Utilities

In Order 2222, the Commission declined to exercise jurisdiction over the interconnection of DERs to distribution facilities.\(^{28}\) The Commission also determined that the need for additional distribution studies of the aggregation of DERs already individually studied would depend on specific circumstances.\(^{29}\) Order 2222 also suggests that further study may only be necessary when the retail regulator has not updated its processes to consider the impact of DER aggregations.\(^{30}\) The Original Filing gives Distribution Utilities a blanket 60 day period to perform studies of each DER aggregation, and gives Distribution Utilities an essentially unilateral right to deny aggregations based on those studies\(^{31}\). The Joint Protest argues that NYISO’s proposal is unacceptably vague and opaque.\(^{32}\) The Joint Protest further argues that New York State’s well-developed distribution interconnection rules make the proposed studies redundant. The Deficiency Letter asks NYISO to clarify the criteria and standards of the proposed Distribution Utility studies.\(^{33}\)

NYISO’s Response reiterates that the criteria for distribution aggregation studies will be set by the Distribution Utilities, and reports on possible criteria the utilities might consider.\(^{34}\) The list of criteria includes market, administrative, legal, distribution, transmission, and environmental attributes. It also suggests Distribution Utilities are empowered to evaluate the telemetry and operational suitability of a resource to participate in an aggregation. NYISO further explains that Distribution Utilities must show an “articulable justification” before setting limits on the quantity, time, or type of services a DER and/or Aggregation may provide.\(^{35}\)

\(^{28}\) Id. at 90.
\(^{29}\) Id at 99.
\(^{30}\) Id.
\(^{31}\) Original Filing at 43.
\(^{32}\) Joint Protest at 13-14.
\(^{33}\) Deficiency Letter VI.A.1
\(^{34}\) Deficiency Response at 41-43.
\(^{35}\) Id. at 43-44.
NYISO’s Response leaves the distribution utility proposal non-compliant with Order 2222 in two important areas. First, Order 222 expresses both belief\(^{36}\) that state and local interconnection processes can address potential distribution system issues, and hope\(^{37}\) that they will. The Joint Protest presents evidence that this is indeed the case in New York State\(^{38}\). Neither NYISO’s Original Filing nor Deficiency Response address the issue, instead proposing to give Distribution Utilities wide review powers with no evidence of the “specific circumstances” Order 2222 says would justify those powers. The Commission should reject NYISO’s proposed utility review process as inconsistent with Order 2222. Even absent Order 2222, the studies envisioned in NYISO’s approach are unreasonable in that no need for them has been demonstrated.

Second, Order 2222 requires distribution utility review to be transparent and provide specific criteria.\(^{39}\) NYISO’s Response confirms that they will have no specific criteria and that the study process will be purely internal to the Distribution Utilities. Indeed, NYISO’s clarification that they can only report what criteria they hear Distribution Utilities might use\(^{40}\), the long and diverse list of such criteria, and that justification for rejection need only meet the standard of “articulable” all support the concern in the Joint Protest that the review process will provide opportunity for arbitrary or anti-competitive denial of applications.\(^{41}\)

d. **NYISO’s Response to Deficiency Letter Topic IV, Locational Requirements, Demonstrates a Viable Alternative to the Unduly Burdensome CRIS Requirement Discussed in Deficiency Letter Topic III.A.4, Deliverability.**

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36 Order 2222 at 99.
37 Id. at 294.
38 Joint Protest at 15-16.
39 See id. at 13.
40 Deficiency Response at 42: “Based upon our discussions with Distribution Utilities, the evaluation of a DER may include…”
41 Joint Protest at 13.
1. **NYISO’s clarified procedure to identify Transmission Nodes for DER Aggregation is reasonable.**

Order 2222 directs ISOs to allow DERs to be aggregated over regions that “are as geographically broad as technically feasible.”\(^42\) The Original Filing proposes to meet this requirement by identifying Transmission Nodes that represent “an electrical area to which individual Distributed Energy Resources may aggregate”\(^43\) The Joint Protest agrees this approach appears reasonable, but states it lacks sufficient detail to be fully evaluated.\(^44\) The Deficiency Letter asks NYISO to provide more detail.\(^45\)

NYISO’s Response reports that NYISO has identified 115 Transmission Nodes and does not expect this number to significantly change.\(^46\) NYISO further clarifies that the criteria used to identify Transmission Nodes includes the location of load pockets and transmission and distribution system constraints, and system topology.\(^47\)

Provided that practical implementation issues are addressed\(^48\), NYISO’s proposal as clarified presents a reasonable approach to allowing DER aggregation over a broad geographical area while respecting transmission constraints and sending accurate price signals.

2. **NYISO’s CRIS requirement as clarified does not comply with Order 2222, but the Transmission Node procedure offers a ready remedy.**

A distinctive attribute of DERs is colocation with load and flexible siting. DERs have demonstrated that these attributes make them technically capable of providing resource adequacy while avoiding transmission upgrades that would be required to support other resource classes.\(^49\) As

\(^42\) Order 2222 at 204.
\(^43\) Original Filing p25, note 97.
\(^44\) Joint Protest at 27.
\(^45\) Deficiency Letter at 9.
\(^46\) Deficiency Response at 34.
\(^47\) Id at 34-35.
contemplated in Order 2222\textsuperscript{50} reform is necessary to ensure that these capabilities are properly accounted for.

The transmission requirements that DERs avoid are represented by deliverability requirements, interconnection queues, and upgrade cost allocations. In NYISO, these manifest through the need for Capacity Resource Interconnection Service (“CRIS”). NYISO needs to reform how CRIS requirements apply to DERs to comply with Order 2222’s requirement to allow DERs to provide capacity up to their technical capability and avoid procurement of unnecessary capacity, and to reflect the locational benefits of DERs.

The original filing implied CRIS requirements would apply to individual DERs and limit aggregations’ ability to provide capacity.\textsuperscript{51} The Joint Protest objected to this as a barrier to entry.\textsuperscript{52} The Deficiency Letter requested NYISO clarify how CRIS rules would apply to DERs.\textsuperscript{53} The Deficiency Response clarifies that each individual DER must obtain CRIS on the same terms as wholesale market resources.\textsuperscript{54}

This approach does not even attempt to engage the Commission’s finding that reform is necessary to correctly measure the impact of DERs on installed capacity requirements, and nullifies any value DERs bring through their distinctive ability to co-locate with load. It also hinders DERs’ ability to provide capacity that they are otherwise capable of providing. NYISO justifies this merely by noting this is the same treatment as other resource classes.\textsuperscript{55}

\textsuperscript{50} Order 2222 at 29: “Further, the reforms required by this final rule will help the RTOs/ISOs account for the impacts of distributed energy resources on installed capacity requirements and day-ahead energy demand, thereby reducing uncertainty in load forecasts and the risk of over procurement of resources and the associated costs, and provide numerous other benefits.”
\textsuperscript{51} Original Filing at 16.
\textsuperscript{52} Joint Protest at 25.
\textsuperscript{53} Deficiency Letter at 6.
\textsuperscript{54} Deficiency Response at 18.
This is insufficient in light of the Commission’s finding that rules developed for one technology may become unjust and unreasonable when applied to another.\textsuperscript{56} Blindly applying rules designed to identify transmission constraints and allocate transmission costs is unduly discriminatory when applied to a resource with the competitive advantage of avoiding those concerns. In Order 2222, the Commission noted that “RTOs/ISOs create 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 participants.”\textsuperscript{57} The ability to serve load without using the transmission system is a unique attribute of DERs that justifies distinctive treatment.

NYISO’s proposed approach to identifying Transmission Nodes for DER Aggregation purposes appears to consider the same factors that allow DERs to provide resource adequacy while avoiding or easing load on the transmission system\textsuperscript{58}. In particular, in determining Transmission Nodes, NYISO identifies load pockets and considers distribution system topology.\textsuperscript{59} NYISO also expects the geographic areas that map to each Transmission Node to “align with expected transmission constraints,”\textsuperscript{60} meaning that DERs should be readily able to serve load located within their Transmission Node. These factors suggest that while identifying Transmission Nodes, NYISO should also be able to determine some quantity of load within each Node that may be served by local DER aggregations without a need for CRIS. Such an approach would recognize the avoided transmission burden inherent to DERs while respecting existing transmission constraints and system topology, and further appears able to be implemented relatively easily.

PIOs thus respectfully request that FERC:

1. Find NYISO’s proposal to require CRIS for all DERs seeking to provide capacity is not in compliance with Order 2222; and

\textsuperscript{56} Order 2222 at 2-3.
\textsuperscript{57} Id. note 7.
\textsuperscript{58} See III.d.1, supra.
\textsuperscript{59} Deficiency Response at 34.
\textsuperscript{60} Id.
2. Direct NYISO to develop screening criteria or other means to identify the amount of capacity from DERs that can be accepted at each Transmission Node without further study and allow DERs to supply capacity accordingly, or explain why such an approach is not technically feasible and propose an alternative that considers DERs’ ability to provide resource adequacy without use of the transmission system.

e. Deficiency Letter question III.A.4(a): determination of CRIS awards

The Deficiency Letter requests NYISO clarify how DERs will be evaluated to determine Capacity Resource Interconnection Service awards. The Deficiency Response explains that, among other factors, the CRIS award for a DER will be limited to no greater than the DER’s Energy Resource Interconnect Service (“ERIS”). ERIS, in turn, is obtained through NYISO interconnection studies.

This approach suffers from two fatal flaws. First, is not compliant with Order 2222. In Order 2222, FERC specifically declined to exercise jurisdiction over the interconnection of individual DERs, yet NYISO proposes to require each individual DER wishing to provide capacity to go through a FERC-jurisdictional interconnection process. Note that NYISO proposes the ERIS studies be carried out for individual DERs, not DER aggregations. So, for example, an aggregator of residential systems wishing to provide capacity would be required to submit an ERIS application for each household. Order 2222 identifies this outcome as causing a variety of problems, and specifically cites avoiding “an overwhelming volume of interconnection requests” as a motivation for their directives on interconnection. NYISO’s clarified procedure for awarding CRIS to DERs ignores this portion of Order 2222, and instead recreates the exact problem FERC directed ISOs to fix.

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61 Deficiency Letter at 6.
62 Deficiency Response at 18.
63 Id.
64 Order 2222 at 90.
65 Deficiency Response at 18
66 Order 2222 at 95-96.
The approach also fails to comply with Order 2222’s requirement that heterogenous aggregations recognize capabilities the component DERs do not have on their own. NYISO proposes that the capacity value of an aggregation be simply the sum of the capacity values of each individual resource, eliminating any possibility of this. The Commission specifically noted the possibility of resources aggregating to meet minimum run time requirements, but NYISO clarifies that the duration limitations of each individual component of an aggregation will be considered separately.

Second, NYISO’s proposal is internally contradictory. Order 2222 is clear that existing ISO interconnection procedures apply only to resources seeking to participate directly in wholesale markets not through an aggregation. A resource participating in an Aggregation may even not have a path to obtain ERIS, as NYISO proposes to modify its Small Generator Interconnection Procedures to exclude them. NYISO has proposed a model where a DER wishing to provide capacity as part of an Aggregation must apply for a service that it doesn’t need and that being part of an Aggregation makes it ineligible for.

Even if those barriers were resolved, NYISO’s proposed DER rules are not compatible with wholesale resources participating in an aggregation. Once a resource completes a wholesale interconnection process such as ERIS, its interconnection becomes FERC-jurisdictional. But NYISO’s proposed rules would subject such a resource to a variety of distribution utility and retail regulatory reviews and procedures that become extra-jurisdictional or irrelevant once it has obtained wholesale interconnection.

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67 Id at 142.
68 Original Filing at 16.
69 Deficiency Response at 17-18.
70 Id. at 97-98.
71 Original Filing, Attachment IV, Section 32.1.1.1
73 Standardization of Generator Interconnection Agreements & Procedures, Order No. 2003, 104 FERC ¶ 61,103 at 803-804.

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The best remedy for this is for the Commission to order a method for DERs to provide capacity without going through interconnection studies, as discussed immediately above. In the alternative, PIOs respectfully request FERC find NYISO’s proposed rules for awarding CRIS to DERs unreasonable and not in compliance with Order 2222 and order NYISO to file new rules that (1) incorporate the findings and directives of Order 2222; and (2) work.

IV. Conclusion

For the foregoing reasons and the reasons stated in the Joint Protest, PIOs respectfully request that the Commission accept NYISO’s compliance filing in part, reject it in part, and direct NYISO to make further compliance filings as described herein.

Respectfully submitted this 16th of December 2021

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74 See III.d.2, supra.
CERTIFICATE OF SERVICE

I hereby certify that I have on this day or the next served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings. Dates this 16th day of December 2021.

/s/ Ashley Leung