

163 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Bayonne Energy Center, LLC

Docket No. ER18-1301-000

ORDER DENYING WAIVER REQUEST

(Issued May 4, 2018)

1. On April 4, 2018, Bayonne Energy Center, LLC (Bayonne) filed a request for waiver of: sections 25.3.1.2, 25.5.10.3, and 25.8.2–25.8.4 of Attachment S to the New York Independent System Operator, Inc.’s (NYISO) Open Access Transmission Tariff (OATT); sections 23.4.5.7.3.3.5, 23.4.5.7.9.4.1, 23.4.5.7.9.4.2, and 23.4.5.7.15.4 of Attachment H to NYISO’s Market Administration and Control Area Services Tariff (Services Tariff); and sections 30.4.6.2.12 and 30.10.4 of Attachment O to NYISO’s Services Tariff.¹ According to Bayonne, the requested waiver would permit Bayonne Energy Center II (BEC II) to enter NYISO’s monthly installed capacity (ICAP) market in June 2018, or as soon thereafter as possible, following the issuance of an order in this proceeding. Bayonne states that it does not seek waiver of any substantive requirements of NYISO’s OATT or Services Tariff, but rather seeks waiver to permit Bayonne to satisfy the substantive requirements of the OATT and Services Tariff ahead of schedule. For the reasons discussed below, we deny the waiver request.

I. Background

2. NYISO processes requests from new large generating facilities (larger than 20 MW) to interconnect to the New York State transmission system using its Large Facility Interconnection Procedures, which are contained in Attachments X and S to the OATT. NYISO clusters project developers that have achieved similar milestones into groups called a Class Year. NYISO evaluates the cumulative impacts of all of the projects in a given Class Year through its Class Year Interconnection Facilities Study. The Class Year Interconnection Facilities Study identifies any upgrades needed to accommodate the interconnection requests included in the Class Year, as well as any

¹ The sections of NYISO’s OATT and Services Tariff listed here are discussed below in greater detail in section II.

subsequent allocation of the costs of those upgrades to Class Year members, and the time required to interconnect the relevant projects.² NYISO performs its Class Year Interconnection Facilities Studies in cycles, beginning on the first eligible start date after the previous Class Year Interconnection Facilities Study has concluded (March 1, June 1, or September 1 of a given year). According to NYISO, Class Year Interconnection Facilities Studies are expected to take about 12 months, but may take longer if additional studies are required.

3. Upon completion of a draft Class Year Interconnection Facilities Study, NYISO submits the study to its Operating Committee for approval. The Class Year Interconnection Facilities Study includes a list of facilities needed to accommodate the projects in the Class Year,³ the cost of these facilities, and the time required to interconnect the facilities. Once the Operating Committee approves the draft Class Year Interconnection Facilities Study, project developers can agree to undergo additional study if NYISO deems it necessary,⁴ and accept or reject their respective allocation of costs. To the extent project developers reject their allocations of cost, NYISO will reevaluate needed upgrades for the remaining Class Year members, make any necessary adjustments, and issue a revised Class Year Interconnection Facilities Study report (in as many iterations as needed until all remaining Class Year members accept their allocation of costs). According to NYISO, this final decision and settlement step can take approximately two months. Thus, from the beginning of the Class Year Interconnection

Facilities Study to the completion of the decision and settlement step is approximately 14 months or longer.⁵

² NYISO, OATT, Attach. X, § 30.1 (8.0.0).

³ The facilities include Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades, as identified in the Interconnection System Reliability Impact Study. NYISO, OATT, Attach. S, § 25.1.2 (6.0.0).

⁴ A project developer can agree to undergo additional study if NYISO identifies a new System Deliverability Upgrade that was not previously identified in another Class Year Interconnection Facilities Study, and gives notice of the need for additional study in order to develop a more detailed identification of the upgrade, cost estimates, and allocation of costs. Projects requiring additional studies would remain clustered if more than one project developer agrees to undergo additional studies. Those projects not requiring additional studies would also remain clustered, in a separate, bifurcated Class Year. *Id.* §§ 25.5.9–10 (10.0.0).

⁵ NYISO, *Manual 23: Transmission Expansion and Interconnection Manual*

4. NYISO recently adopted reforms that allow projects not requiring additional study to bifurcate and complete the Class Year process early, while other projects can continue to undergo additional study. If projects requiring additional study agree to undergo additional study, the Class Year will bifurcate. In this case, Class Year 2017 would separate into Class Year 2017-1 and Class Year 2017-2. All project developers not requiring additional study (Class Year 2017-1) would have 30 days to either accept their allocation of costs and post security, change their interconnection request, or withdraw from the Class Year. As a general rule, the Class Year process would be complete when all of the project developers have accepted their respective allocation of costs and have either paid those costs or posted security.⁶ To the extent that a Class Year bifurcates, the two Class Year processes would be completed separately, once all of the project developers in the respective Class Year have accepted their respective allocation of costs and have either paid those costs or posted security.

5. Once a new large generating facility completes the Class Year process, it can participate in NYISO's ICAP markets by obtaining a Capacity Resource Interconnection Service (CRIS)⁷ award, executing an interconnection agreement, and obtaining a final determination under NYISO's buyer-side market power mitigation rules. NYISO's buyer-side market power mitigation rules provide that, unless exempt from mitigation, new capacity resources must enter the New York City and Lower Hudson Valley (G-J Locality) ICAP markets (mitigated capacity zones) at a price at or above the applicable offer floor until their capacity clears 12 monthly auctions.⁸ A new entrant will be exempt from the offer floor requirement if NYISO determines that it passes either part of NYISO's mitigation exemption test,⁹ or if it qualifies for a categorical exemption, such as

at 3-11 to 3-13 (June 2017), http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Planning/tei_mnl.pdf. According to NYISO, the expected schedule is increased by six months if additional upgrade studies are performed.

⁶ *Id.*

⁷ CRIS is defined as "the service provided by the ISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance with Attachment S to the ISO OATT; such service being one of the eligibility requirements for participation as an ISO Installed Capacity Supplier." NYISO, OATT, Attach. X, § 30.1 (8.0.0).

⁸ NYISO, Services Tariff, Attach. H, § 23.4.5.7 (22.0.0).

⁹ *Id.* § 23.4.5.7.2 (22.0.0). Under Part A of the mitigation exemption test, NYISO will exempt a new entrant from the offer floor if the forecast of capacity prices in the first year of a new entrant's operation is higher than the default offer floor, which is

the competitive entry exemption. The competitive entry exemption exempts from NYISO's offer floor unsubsidized, competitive entrants that have no incentive to suppress ICAP market prices.¹⁰ NYISO issues preliminary buyer-side market power mitigation exemption determinations after the Operating Committee approves the Class Year Interconnection Facilities Study, but before project developers must decide whether to accept their allocation of costs and move forward with the Class Year process. If project developers drop out of the Class Year, NYISO recalculates its buyer-side market power mitigation exemption determinations for those projects that remain in the Class Year, and issues final determinations after the Class Year process is complete. NYISO's buyer-side market power mitigation rules are closely aligned with its bifurcation rules, such that, if a Class Year bifurcates, NYISO evaluates project developers under rules designed for the bifurcated Class Year process.

II. Bayonne's Waiver Request

6. BEC II consists of two new natural gas-fired units with approximately 120 MW of capacity (summer) being added to the existing 512 MW Bayonne Energy Center in Bayonne, New Jersey.¹¹ BEC II is a member of Class Year 2017, which began on March 1, 2017. Bayonne expects BEC II to be ready to enter commercial operation in May 2018, as Bayonne has already engaged in substantial investment in and construction of BEC II, and recently executed an interconnection agreement for BEC II.¹² According to Bayonne, BEC II will soon begin participating in NYISO's wholesale energy market using transmission and interconnection headroom that Bayonne created and paid for when it constructed the existing Bayonne Energy Center.¹³ Bayonne asserts that BEC II will enhance reliability, resiliency, and operator flexibility through the addition of two quick start dual fuel generators that will add capacity, energy, 10- and 30-minute 75 percent of the net cost of new entry (CONE) of the hypothetical unit modeled in NYISO's most recent demand curve reset. Under Part B, NYISO will exempt a new entrant from the offer floor if the forecast of capacity prices in the first three years of a new entrant's operation is higher than the unit-specific net CONE of the new entrant.

¹⁰ *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139, at P 45, *order on reh'g, clarification, & compliance*, 152 FERC ¶ 61,110 (2015). By unsubsidized, competitive entrants, the Commission referred to "those projects that are funded privately, rather than with subsidies, and that will recover their costs through market revenues." *Id.* P 46 n.97; *see also* NYISO, Services Tariff, Attach. H, § 23.4.5.7.9 (22.0.0).

¹¹ Bayonne Waiver Request at 1 n.3, 4.

¹² *Id.* at 4.

¹³ *Id.* at 1.

operating reserves, regulation, voltage support, and Black Start capability to New York City, one of the most congested load areas in the nation. Moreover, Bayonne states that BEC II has direct interconnects to two different interstate natural gas pipelines and has access to oil from an adjacent oil terminal. Bayonne further states that BEC II will reduce capacity costs, ameliorating the increase in capacity costs caused by the recent announcement of certain forced outages.¹⁴

7. Bayonne states that the 2017 Class Year Interconnection Facilities Study was originally scheduled to be completed and approved by NYISO's Operating Committee in December 2017, but that schedule has since been delayed until at least April 2018.¹⁵ According to Bayonne, after the bifurcation determination is made, it would then need to wait for the duration of the 30-day bifurcation decision period, during which project developers either accept their allocation of costs and post security, change their interconnection request, or withdraw from the Class Year, before the expedited Class Year 2017-1 would close. Bayonne claims that having to wait would jeopardize its ability to participate in the June 2018 monthly auction, for which the bidding window closes on May 10, 2018. Thus, Bayonne argues, it would not be able to offer its capacity for some or all of the peak summer demand period. Bayonne contends that this would deprive Bayonne of the least discounted revenues the project will earn, but would also deprive the market of competitive new entry, associated price discipline resulting from competition, and substantial cost savings for consumers.¹⁶ Therefore, Bayonne requests waiver of tariff provisions that would delay its satisfaction of, and NYISO's formal recognition that Bayonne has satisfied, the substantive tariff requirements to participate in NYISO's monthly ICAP market before the close of NYISO's Class Year 2017 process.¹⁷ Bayonne requests waiver by May 7, 2018, so that, if NYISO's Operating Committee approves the 2017 Class Year Interconnection Facilities Study at its April 12, 2018, meeting, Bayonne can submit a bid for the June 2018 monthly auction before the bidding window closes on May 10, 2018.¹⁸

¹⁴ *Id.* at 2, 4–5.

¹⁵ Bayonne states that the 2017 Class Year Interconnection Facilities Study was to be presented to the Operating Committee on April 12, 2018, at the earliest. It has not yet been presented to the Operating Committee. The next Operating Committee meeting is scheduled for May 17, 2018. In its answer, Bayonne does not modify its request for waiver by May 7, 2018.

¹⁶ Bayonne Waiver Request at 2, 14–15.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 2–3 & n.8, 19. As noted above, the 2017 Class Year Interconnection Facilities Study was not presented to the Operating Committee in April.

8. Bayonne states that it does not seek waiver of any substantive requirements. Rather, Bayonne asserts that it only seeks waiver as to the timing of certain requirements. Bayonne explains that, even with waiver, it would still have to satisfy the following substantive requirements for participation in NYISO's ICAP market: (1) registration requirements; (2) posting security for upgrades identified in the Class Year Interconnection Facilities Study, as applicable; (3) obtaining a final buyer-side market power mitigation exemption determination or an offer floor; (4) obtaining a CRIS award; and (5) having an effective interconnection agreement. In addition, Bayonne states that to enter the market in advance of constructing interconnection or upgrade facilities, it must have a completed Limited Operations Study that determines the extent to which the project may operate reliably. Bayonne contends that, once NYISO's Operating Committee approves the 2017 Class Year Interconnection Facilities Study, Bayonne will be able to satisfy every substantive requirement. Bayonne states that it seeks waiver of the timing of requirements (2), (3), and (4), but not the substantive requirements, as explained below.¹⁹ Bayonne does not seek waiver of the timing or the substance of the other requirements.

9. With regard to posting security for upgrades identified in the Class Year Interconnection Facilities Study, Bayonne requests waiver of sections 25.5.10.3 and 25.8.2–25.8.4 of Attachment S to the OATT to allow Bayonne to accept its allocation of costs for necessary upgrades identified through the 2017 Class Year Interconnection Facilities Study and deliverable MW, and to commit to timely post any associated security before the close of the Class Year 2017 process.²⁰ According to Bayonne, waiver of these tariff sections would also allow NYISO to recognize BEC II's satisfaction of these requirements before the close of the Class Year 2017 process. Bayonne contends that, based on the studies to date, Bayonne will not be responsible for the costs of any relevant upgrades. However, Bayonne contends that NYISO has identified one project in Class Year 2017 that would require upgrades. If the project that would require upgrades moves forward, Bayonne explains that Class Year 2017 could bifurcate, so that projects that do not require upgrades could proceed through the next step (the cost allocation process) and enter NYISO's markets before NYISO completes additional studies on the project that requires upgrades. Under this circumstance, Bayonne states that NYISO would calculate the highest possible allocation of costs for each project developer, and each project developer would then be required to post security for that full amount. Bayonne requests waiver to be able to, before the close of

¹⁹ *Id.* at 6.

²⁰ These provisions of Attachment S to NYISO's OATT govern the deadlines for a project developer to accept its allocation of costs for necessary upgrades identified through the Class Year Interconnection Facilities Study and deliverable MW, and to commit to timely post any associated security, specifying that a project developer may do so after the completion of certain steps in NYISO's Class Year process.

the Class Year 2017 process, either accept prior allocations of cost or post security, as applicable, or, if the Class Year bifurcates, to accept the highest possible cost allocation and post any required security.²¹

10. As for obtaining a final buyer-side market power mitigation exemption determination or an offer floor, Bayonne asserts that, if Class Year 2017 bifurcates, Bayonne expects that NYISO would issue a preliminary determination that BEC II is eligible for the competitive entry exemption. According to Bayonne, a preliminary competitive entry exemption determination would be identical to the final exemption, subject to Bayonne sufficiently recertifying its eligibility for the competitive entry exemption up until the project produces energy. Bayonne further asserts that whether other projects in Class Year 2017 exit or remain, and whether the Class Year bifurcates, would not affect a competitive entry exemption determination. Nevertheless, Bayonne explains that section 23.4.5.7.3.3.5 of Attachment H to the Services Tariff states that NYISO will provide final exemption determinations after the close of the Class Year process. Therefore, Bayonne requests waiver of this section to permit a final exemption determination for BEC II before the close of the Class Year 2017 process. In addition, Bayonne states that sections 23.4.5.7.9.4.1 and 23.4.5.7.9.4.2 of Attachment H, and sections 30.4.6.2.12 and 30.10.4 of Attachment O, to the Services Tariff require NYISO to post after the close of the Class Year process whether entities that requested a competitive entry exemption received one, and require the Market Monitoring Unit to publish a report on NYISO's determination. Bayonne requests waiver of these sections to allow NYISO to post whether BEC II obtained an exemption and to allow the Market Monitoring Unit to publish a partial report on BEC II's exemption immediately following issuance of the preliminary determination, instead of waiting until the close of the Class Year process.

²¹ Bayonne Waiver Request at 6–9.

11. Bayonne also requests waiver of section 23.4.5.7.15.4 of Attachment H to the Services Tariff to allow NYISO to treat BEC II as a member of Class Year 2017 and not as an existing unit for purposes of the Class Year process, including base case development and buyer-side market power mitigation exemption determinations for other members of Class Year 2017 and future Class Years. Bayonne contends that the market has been aware that BEC II and two other projects have sought a competitive entry exemption since the second quarter of 2017.²²

12. Finally, in reference to obtaining a CRIS award, Bayonne explains that section 25.3.1.2 of Attachment S to the OATT does not contemplate granting a CRIS award until the close of the Class Year process. Bayonne contends that the substantive requirements for NYISO to grant a CRIS award are posting security for any required upgrades and obtaining a final buyer-side market power mitigation exemption determination. As explained above, Bayonne asserts that a limited waiver to allow acceleration of security commitment and recognition of a competitive entry exemption would allow Bayonne to satisfy these requirements. Therefore, Bayonne argues that there is a substantive basis to waive the requirement to wait until the close of the Class Year process to grant Bayonne a CRIS award.

13. Bayonne asserts that its waiver request satisfies the Commission's criteria for granting waiver because (1) Bayonne acted in good faith, (2) the waiver is of limited scope, (3) the waiver would remedy a concrete problem, and (4) the waiver does not have undesirable consequences, such as harming third parties. First, Bayonne states that it has cooperated with NYISO throughout the interconnection and buyer-side market power mitigation processes and has satisfied the applicable requirements to date. According to Bayonne, this has included working with NYISO and other stakeholders to revise the interconnection rules to allow for a bifurcated Class Year process. Bayonne states that it responded to price signals and has acted diligently to prepare BEC II to enter commercial operation in accordance with the initially targeted December 2017 Class Year bifurcation date, which has since been delayed. Bayonne notes that it does not request waiver of any substantive requirements.²³

²² *Id.* at 10–12. Bayonne notes that the Commission granted Bayonne and two other parties waivers in mid-2017 to allow NYISO to review, and, if appropriate, grant competitive entry exemptions for Class Year 2017. *Id.* at 12 (citing *Bayonne Energy Center, LLC*, 160 FERC ¶ 62,060 (2017); *Cricket Valley Energy Center, LLC*, 160 FERC ¶ 61,101 (2017); *NRG Energy, Inc.*, 160 FERC ¶ 62,100 (2017)).

²³ *Id.* at 15–17.

14. Second, Bayonne asserts that the waiver is of limited scope because it is a one-time waiver conditioned on NYISO making determinations consistent with its OATT and Services Tariff and allowing Bayonne to act on these determinations, which are not subject to change, subject to Bayonne satisfactorily recertifying its competitive entry exemption and posting any required security.²⁴

15. Third, Bayonne argues that the waiver would remedy a concrete problem because it would apply only to OATT and Services Tariff provisions that would delay Bayonne's satisfaction of, and NYISO's formal recognition that Bayonne has satisfied, the substantive requirements for BEC II to participate in the NYISO ICAP market as early as June 2018 without waiting until the close of the Class Year 2017 process. Bayonne asserts that failure to grant the waiver would deprive the market and Bayonne of the benefits of BEC II's participation over the peak summer period. Bayonne notes that it committed substantial resources in response to NYISO's market price signals.²⁵

16. Finally, Bayonne contends that the waiver does not have undesirable consequences, such as harming third parties. Rather, Bayonne argues, the waiver would benefit consumers through decreased capacity prices and would provide increased reliability in New York City. Bayonne explains that, although incumbent generators have sought to impede Bayonne's competitive entry in the past, Bayonne responds that a price impact on incumbent generators is not a legitimate harm that the Commission seeks to avoid when considering waiver requests.²⁶

III. Notice of Filing and Responsive Pleadings

17. Notice of Bayonne's filing was published in the *Federal Register*, 83 Fed. Reg. 16,350 (2018), with interventions and protests due on or before April 18, 2018. Consolidated Edison Company of New York, Inc.; New York Transmission Owners;²⁷ and NRG Power Marketing LLC and GenOn Energy Management, LLC filed motions to intervene. The New York State Public Service Commission filed a notice of intervention.

²⁴ *Id.* at 17.

²⁵ *Id.* at 17–18.

²⁶ *Id.* at 18–19.

²⁷ New York Transmission Owners consist of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Power Supply Long Island; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

NYISO filed a motion to intervene and comments. On April 23, 2018, Bayonne filed an answer to NYISO's comments.

A. NYISO's Comments

18. NYISO states that it takes no position on whether Bayonne has satisfied the criteria for obtaining a waiver, but asks that the Commission clearly address which conditions precedent must exist for Bayonne's waiver request to become effective. In addition, NYISO seeks guidance from the Commission on six implementation issues and asks that the Commission emphasize that NYISO's existing Class Year and buyer-side market power mitigation rules will continue to apply to future projects.

19. With regard to conditions precedent, NYISO asks that the Commission identify in the order the following conditions precedent for Bayonne's waiver request to become effective: (1) approval by the Operating Committee of the 2017 Class Year Interconnection Facilities Study; and (2) a preliminary buyer-side market power mitigation exemption determination that BEC II is eligible for a competitive entry exemption. NYISO asserts that, if these conditions are satisfied, BEC II could obtain a CRIS award after also satisfying the following requirements: (1) posting security for any required upgrades (or if the Class Year bifurcates, for the highest possible allocation of costs); (2) providing final certification and acknowledgment for the competitive entry exemption, NYISO issuing a final buyer-side market power mitigation exemption determination, NYISO posting notice that BEC II received a competitive entry exemption, and the Market Monitoring Unit issuing a report on that determination; and (3) satisfying all other generally applicable requirements to participate in the ICAP market (e.g., submitting test results).²⁸

20. NYISO explains that the Commission recently accepted significant improvements to the Class Year process, which minimize delays for project developers unaffected by additional upgrade studies by creating an "exit ramp" that would allow such project developers to complete the Class Year process early through Class Year bifurcation. According to NYISO, the bifurcation determination is dependent on whether project developers whose projects have been identified for further studies agree to proceed with those studies. If the identified project developers decline further study, Class Year 2017 will not bifurcate and these project developers will either modify their interconnection service requests or withdraw from the Class Year altogether. Or, if these project developers agree to further study, then the Class Year will bifurcate and enter into two separate decision and settlement phases.²⁹ Project developers whose projects do not require further study can proceed with an expedited Class Year process. NYISO explains

²⁸ NYISO Comments at 11–13.

²⁹ *Id.* at 5–7.

that it does not yet know whether Class Year 2017 will bifurcate. But in either case, the decisions of the project developers whose projects have been identified for further study would affect the buyer-side market power mitigation exemption determinations and allocation of upgrades costs for other project developers in the Class Year. While Bayonne indicates that the December 2017 target date for the Operating Committee to approve the 2017 Class Year Interconnection Facilities Study was not met, NYISO clarifies that December 2017 was three months ahead of the schedule in the OATT.³⁰

21. NYISO contends that Bayonne's waiver request impacts more sections of the OATT and Services Tariff and has broader implications than is apparent from the number of waivers that Bayonne explicitly requests.³¹ NYISO explains that the implications of Bayonne's requested waiver depend on whether Class Year 2017 bifurcates. NYISO states that if Class Year 2017 bifurcates, NYISO should be able to follow existing tariff processes without major adjustments.³² However, NYISO contends that if Class Year 2017 does not bifurcate, then the requested waiver could have more significant implications and has the potential to impact the outcomes of buyer-side market power mitigation exemption determinations that NYISO makes for other projects in the Class Year. In this case, NYISO states that it has concerns.³³

22. According to NYISO, if the Class Year does not bifurcate, for purposes of buyer-side market power mitigation exemption determinations (and the forecasts of future ICAP markets more specifically), NYISO could either treat BEC II: (1) as if it were effectively a member of Class Year 2017; or (2) as if it were in a prior completed Class Year (i.e., as an existing unit).³⁴ NYISO states that it could accommodate either treatment, but that it would be more reasonable to treat BEC II as if it were a member of a prior completed Class Year because this approach would appropriately reflect the reality that BEC II would have CRIS and be participating in the ICAP market.³⁵ NYISO requests that if the

³⁰ *Id.* at 9–10, 13–14, 15 n.44.

³¹ *Id.* at 10 & nn.28, 30 (listing additional tariff provisions of which NYISO asserts Bayonne is also effectively requesting waiver).

³² *Id.* at 15–16.

³³ *Id.* at 17.

³⁴ *Id.* at 18–19; *see also* NYISO, Services Tariff, Attach. H, § 23.4.5.7.15.4 (22.0.0) (defining “Existing Units” for purposes of its buyer-side market power mitigation exemption determinations as the set of projects identified in NYISO’s “most-recently published Gold Book that have CRIS, and are operating at the time that the ISO determines the forecast”). Notably, treating BEC II as an existing unit would affect the outcome of buyer-side market power mitigation exemption determinations for other projects in Class Year 2017.

Commission grants the waiver request and directs NYISO to provide CRIS to BEC II prior to the completion of Class Year 2017, it make clear how NYISO is to make buyer-side market power mitigation exemption determinations for other Class Year 2017 projects.³⁶

23. If the Commission grants the waiver request, NYISO also requests guidance from the Commission on six implementation issues. In particular, NYISO asks that the Commission confirm that: (1) the requested waiver will not apply unless all of the conditions precedent discussed above are met; (2) BEC II must remain in Class Year 2017 and be required, at each decision period, to accept the costs that it is allocated and to post required security; (3) if Class Year 2017 bifurcates, NYISO should treat BEC II as a member of Class Year 2017 and if Class Year 2017 does not bifurcate, NYISO should treat BEC II as a member of a prior completed Class Year (or otherwise clarify how NYISO should treat BEC II); (4) BEC II must submit re-certifications that satisfy the competitive entry exemption rules through the date that the exemption determination becomes final; (5) the Market Monitoring Unit is to issue its report on NYISO's competitive entry exemption and unit net CONE determinations for BEC II so that NYISO can post that report on its website upon issuance of the final exemption determination; and (6) NYISO is authorized to take all steps that it reasonably deems necessary to give effect to the waiver while also administering its Class Year process and buyer-side market power mitigation rules with as few deviations as practicable.³⁷ As to the last request, NYISO states that it has endeavored to identify as many of the rules potentially implicated by the waiver request as it could, but there may be other rules that have to be waived, and other implications that have to be addressed.³⁸

24. Lastly, NYISO requests that, should the Commission grant the waiver request, it make clear that the decision is based solely on the specific circumstances of BEC II and is not precedent for granting future waiver requests. NYISO asserts that it has previously emphasized the need for caution when waiving deadlines under the buyer-side market

power mitigation rules because of the potential for disruptions, and even more so where a party requests expansive waivers (such as here). NYISO contends that broad and substantive waivers of the Class Year rules and buyer-side market power mitigation rules should only be allowed when unique circumstances require it.³⁹

³⁵ NYISO Comments at 19.

³⁶ *Id.*

³⁷ *Id.* at 20–22.

³⁸ *Id.* at 22.

B. Bayonne's Answer

25. Bayonne confirms that it does not object to any of the conditions precedent that NYISO identifies, the guidance from the Commission that NYISO seeks, or the additional Services Tariff provision for which Bayonne only generally sought waiver in its original waiver request.⁴⁰ However, Bayonne clarifies that it would have no objection to the Commission including in an order the list of uncontested conditions, but the waiver would not be conditioned on satisfaction of the conditions. Instead, Bayonne contends that the Commission would observe that it is uncontested that for BEC II to begin participating in the ICAP market before the close of Class Year 2017, BEC II would also have to satisfy the identified conditions as determined by NYISO.⁴¹

26. With regard to NYISO issuing its preliminary buyer-side market power mitigation exemption determination and the Market Monitoring Unit posting a report on that determination, Bayonne states that it does not seek a requirement that NYISO issue the determination early or that the Market Monitoring Unit issue the report early; rather, Bayonne seeks waiver to grant NYISO and the Market Monitoring Unit the authority to issue these determinations, postings, and reports early.⁴² As for the specific OATT and Services Tariff provisions of which Bayonne seeks waiver, Bayonne states that it explicitly addressed 12 of the 13 provisions NYISO identified. Regarding section 23.4.5.7.2 of Attachment H to the Services Tariff, Bayonne explains that it requested waiver of any provisions necessary to give effect to the waivers requested, so to the extent waiver of this provision is also required, Bayonne requests waiver.⁴³ In addition, Bayonne states that it recognizes that there may be other implementation details that flow logically within the requested waivers, so it does not object to NYISO's request for broad authority.⁴⁴ Bayonne also states that it does not object to NYISO's preferred treatment for BEC II in making buyer-side market power mitigation exemption determinations for other members of Class Year 2017 (i.e., treating BEC II as a member of a prior completed Class Year).⁴⁵

³⁹ *Id.* at 23–24.

⁴⁰ Bayonne Answer at 2–5.

⁴¹ *Id.* at 6.

⁴² *Id.*

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 9.

⁴⁵ *Id.* at 8–9.

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁶ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁴⁷ prohibits answers unless otherwise ordered by the decisional authority. We will accept Bayonne's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

29. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁴⁸ Applying these criteria here, we deny Bayonne's waiver request.

30. Specifically, we find that Bayonne has not sufficiently demonstrated that its waiver request is limited in scope and that granting it would not have undesirable consequences, such as harming third parties. First, we find that Bayonne's waiver request is not limited in scope. Bayonne requests waiver of at least 11 sections of NYISO's OATT and Services Tariff.⁴⁹ Some of these provisions relate to the Class Year

⁴⁶ 18 C.F.R. § 385.214 (2017).

⁴⁷ *Id.* § 385.213(a)(2).

⁴⁸ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

⁴⁹ There seems to be some debate about exactly which sections of the OATT and Services Tariff Bayonne needs waiver of in order to effectuate its request to begin participating in the ICAP market before the close of Class Year 2017. This alone is a cause for concern when considering whether the waiver request is limited in scope. Bayonne Waiver Request at 5–15 (In addition to listing specific sections, Bayonne “requested waiver of *any provisions of the Tariffs necessary to give effect to the waivers requested in the Petition*. Accordingly, to the extent waiver of [Services Tariff] Attachment H, section 23.4.5.7.2 is required, [Bayonne] requests that this waiver be granted.” (emphasis added)); NYISO Comments at 10 & n.30; Bayonne Answer at 7–9; see also NYISO Comments at 22 (“Although the NYISO has endeavored to identify as

process bifurcating, and it is unclear whether Bayonne will even need waiver of these provisions given that it is not clear yet whether Class Year 2017 will bifurcate.⁵⁰ The breadth of Bayonne's waiver request is also evidenced by NYISO's response to the waiver request, seeking guidance from the Commission on six issues related to implementing Bayonne's waiver request, as well as seeking broad authorization to "take all steps that [NYISO] reasonably deems necessary to give effect to the waivers while also administering its Class Year process and [buyer-side market power mitigation rules] with as few deviations both with respect to BEC II and other projects, as practicable."⁵¹

31. In addition, we find that Bayonne has not sufficiently demonstrated that granting its waiver request would not have undesirable consequences, such as harming third parties. We are not convinced that granting Bayonne's waiver request would not delay NYISO's completion of the Class Year 2017 process for other projects. For example, NYISO states that its ability to alter its implementation of the buyer-side market power mitigation exemption determinations "depends on the proximity of the Commission's issuance of an order in relation to the deadline for the NYISO to issue" determinations for the other Class Year 2017 projects.⁵² Also, NYISO contends that "[b]road and substantive waivers of the Class Year rules and [buyer-side market power mitigation rules] should only be allowed when unique circumstances require it" because such waivers can put administration of the interconnection rules "at risk, potentially creating delay for other projects."⁵³ NYISO adds that "[w]aivers may also put the administration of the [buyer-side market power mitigation rules], which include consultation with the [Market Monitoring Unit], in jeopardy," resulting in "over- or under-mitigation of other projects."⁵⁴ As discussed above, we find Bayonne's waiver request broad, thereby

many of the rules potentially implicated by the waiver request as it could in the time available, it may be that other rules would have to be waived, and other implications addressed, if the Petition is granted.").

⁵⁰ *E.g.*, NYISO, OATT, Attach. S, § 25.5.10.3 (10.0.0) (explaining the bifurcation decision period and associated security posting requirements).

⁵¹ NYISO Comments at 22.

⁵² NYISO Comments at 19 n.50.

⁵³ *Id.* at 24. Note that NYISO does not take a position on whether Bayonne has demonstrated such unique circumstances to require waiver, but several times refers to Bayonne's waiver request as expansive and broad. *E.g.*, *id.* at 23–24 (describing this proceeding as involving "a request for much more expansive waivers").

⁵⁴ *Id.* at 24. While Bayonne requests that BEC II be treated as a member of Class Year 2017 for purposes of the Class Year process, including for base case development, buyer-side market power mitigation exemption determinations, and future Class Years,

risking NYISO's timely administration of the Class Year process, potentially harming third parties.

32. We also note that Bayonne assumes, without support, that both NYISO and its Market Monitoring Unit can expedite their processes if the Commission grants the waiver request.⁵⁵ Bayonne explicitly states that it does not seek a requirement that NYISO issue the preliminary buyer-side market power mitigation exemption determination early and that the Market Monitoring Unit issue a partial report early, but rather only that they have

the authority to do so.⁵⁶ In this way, it is unclear whether granting the waiver request would even provide Bayonne the relief it seeks.

33. For these reasons, we deny Bayonne's waiver request.

The Commission orders:

Bayonne's waiver request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

NYISO disagrees, and instead prefers to treat BEC II as an existing unit. Bayonne Waiver Request at 12; NYISO Comments at 18–19. Without deciding which option would be preferable, we note that treating BEC II as an existing unit would affect the outcome of buyer-side market power mitigation exemption determinations for other projects in Class Year 2017.

⁵⁵ See Bayonne Waiver Request at 11 (stating that Bayonne “believes the [Market Monitoring Unit] could readily review and corroborate as appropriate” Bayonne’s competitive entry exemption). We note that the bifurcation provisions the Commission accepted in December 2017 already expedite the Class Year process for certain project developers. See *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER18-80-000 (2017) (delegated order); NYISO Comments at 2 n.5. Class Year 2017 is the first Class Year to potentially benefit from these new provisions. Bayonne thus seeks to expedite the process even more than NYISO’s existing bifurcation process for BEC II without waiting to see whether Class Year 2017 bifurcates. The Commission has found these provisions and associated timelines just and reasonable, and there is no evidence that NYISO has not followed these provisions for the Class Year 2017 process.

⁵⁶ Bayonne Answer at 6.

Nathaniel J. Davis, Sr.,
Deputy Secretary.