179 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

New York Independent System Operator, Inc. Docket No. ER22-772-001

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO CONDITION

(Issued May 10, 2022)

1. On January 5, 2022, as amended on March 11, 2022, the New York Independent System Operator, Inc. (NYISO) filed, pursuant to section 205 of the Federal Power Act (FPA)[1] and part 35 of the Commission's regulations,[2] proposed revisions to NYISO's Market Administration and Control Area Services Tariff (Services Tariff) to: (1) exclude resources that further the goals of New York State's Climate Leadership and Community Protection Act (CLCPA) from application of NYISO's buyer-side market power mitigation rules (BSM Rules); (2) accredit all resources' capacity value based on their marginal contribution to resource adequacy; and (3) compute NYISO's capacity market demand curves using the derating factor for the reference peaking plant. For the reasons discussed below, we accept NYISO's filing, to be effective May 11, 2022, as requested, subject to NYISO: (1) submitting a one-time informational filing at the completion of its "Phase 2" stakeholder process;[3] and (2) filing the necessary conforming revisions identified by NYISO and other parties in this proceeding.

I. Background

A. NYISO's Installed Capacity Auctions

2. NYISO administers three types of Installed Capacity (ICAP)[4] Auctions to accommodate Load Serving Entities' (LSE) and ICAP Suppliers' efforts to enter into

[1] 16 U.S.C. § 824d.

[2] 18 C.F.R. § 35.13 (2021).

[3] *See infra* PP 22, 114.

[4] Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in NYISO's Services Tariff.

capacity transactions: (1) Capability Period Auctions; (2) Monthly Auctions; and (3) Spot Market Auctions.[5] The Capability Period Auctions allow LSEs to procure capacity from ICAP Suppliers for the entire Summer Capability Period (from May 1 through October 31 of each year) or Winter Capability Period (from November 1 of each year through April 30 of the following year). Similarly, the Monthly Auctions allow LSEs to purchase capacity for the forthcoming month and any other month or months remaining in the current Capability Period. LSEs are not required to purchase capacity in the Capability Period Auctions or Monthly Auctions.

3. The Spot Market Auction is a mandatory auction in which all LSEs must procure any additional capacity needed to meet their capacity obligations.[6] The Spot Market Auction covers the forthcoming month, which is called the Obligation Procurement Period. The Spot Market Auction reflects LSEs' demand for capacity using an ICAP Demand Curve that NYISO defines in accordance with its Services Tariff.[7]

4. Each of NYISO's ICAP Auctions transacts in units of Unforced Capacity (UCAP), with LSEs' UCAP obligations determined based on the New York Control Area (NYCA) Minimum ICAP Requirement and the Locational Minimum ICAP Requirements (LCR) for their Locality, i.e., their capacity zone.[8] NYISO derives the NYCA Minimum ICAP Requirement and LCRs from the New York State Reliability Council's (NYSRC)[9] Installed Reserve Margin (IRM), which the NYSRC establishes each year and files with the Commission.[10] NYISO converts the NYCA Minimum ICAP Requirement and LCRs into UCAP terms based on the ratio of: (1) the total amount of UCAP that resources are

[5] NYISO, NYISO Tariffs, NYISO MST, 5.13 MST Installed Capacity Auctions (3.0.0); NYISO, NYISO Tariffs, NYISO MST, 5.14 MST Installed Capacity Spot Market Auction and Installed Capacity Supplier Deficiencies (34.0.0).

[6] NYISO, Services Tariff, § 5.14.

[7] *Id.* § 5.14.1.2.

[8] *See* NYISO, NYISO Tariffs, NYISO MST, 5.10 MST NYCA Minimum Installed Capacity Requirement (4.0.0); NYISO, NYISO Tariffs, NYISO MST, 5.11 MST Requirements Applicable to LSEs (18.0.0).

[9] The NYSRC was approved by the Commission in 1998 as part of the restructuring of the electricity market in New York State and the formation of NYISO. One of the responsibilities assigned to the NYSRC is the establishment of the statewide resource adequacy requirement. *See Cent. Hudson Gas & Elec. Corp.*, 83 FERC ¶ 61,352 (1998), *order on reh'g*, 87 FERC ¶ 61,135 (1999).

[10] *See, e.g.*, *N.Y. State Reliability Council*, Docket No. ER22-675-000 (Feb. 14, 2022) (delegated letter order).

qualified to provide; to (2) the sum of the Adjusted ICAP values used to determine the UCAP of such resources.[11] NYISO's current rules for determining resources' ICAP, Adjusted ICAP, and UCAP are summarized below.

B. NYISO's Capacity Accreditation Rules

5. NYISO's capacity accreditation rules determine the quantity of capacity that market participants may offer into the ICAP Auctions. NYISO defines three different terms in accounting for resources' accredited capacity value: ICAP, Adjusted ICAP, and UCAP.[12] UCAP is the quantity of capacity that a market participant is compensated for when it sells the ICAP of its resource into NYISO's ICAP Auctions.

6. A resource's ICAP is based on the lesser of its Capacity Resource Interconnection Service rights and Dependable Maximum Net Capability.[13] A resource's Dependable Maximum Net Capability is its sustained maximum net output, as demonstrated by a performance test or through actual operation, averaged over a continuous time period.[14] The Dependable Maximum Net Capability of an Intermittent Power Resource, such as a wind or solar resource, is its nameplate megawatt (MW) capacity.[15] The Dependable Maximum Net Capability of an Energy Storage Resource is its capability as measured at an output level consistent with its selected Energy Duration Limitation.[16]

7. A resource's Adjusted ICAP is equal to its ICAP multiplied by its applicable Duration Adjustment Factor.[17] NYISO's Services Tariff sets forth Duration Adjustment Factors applicable to resources with limited run times (e.g., Energy Storage Resources) of two, four, six, and eight hours ranging from 37.5% to 100%.[18] The Duration Adjustment Factor for resources without a limited run time is set equal to 100%.

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[11] NYISO, Services Tariff, §§ 5.10, 5.11.5.

[12] *See* Transmittal at 14-16, 33.

[13] *Id.* at 33.

[14] NYISO, NYISO Tariffs, NYISO MST, 2.4 MST Definitions - D (14.0.0).

[15] Transmittal at 33.

[16] NYISO, NYISO Tariffs, NYISO MST, 5.12 MST Requirements Applicable to Installed Capacity Suppliers (38.0.0), § 5.12.1.13; *see also id.* § 5.12.14.

[17] NYISO, Services Tariff, § 5.12.14.2.

[18] *Id.* § 5.12.4.

8. A resource's UCAP is equal to its Adjusted ICAP multiplied by one minus the resource's derating factor, where the derating factor represents its historic performance or availability.[19] For Generators, System Resources, Special Case Resources, Energy Limited Resources, and municipally owned generation, the derating factor is the resource's Equivalent Demand Forced Outage Rate, which is derived from its availability over the prior two like Capability Periods, i.e., over the prior two summers or winters. Similarly, for Energy Storage Resources, the derating factor is based on a resource's individual availability in the Real-Time Market over the prior two like Capability Periods. For Intermittent Power Resources, such as wind and solar resources, the derating factor is based on the amount of capacity the resource can reliably provide during system peak load hours, with the hours weighted in accordance with factors stated in the Services Tariff. Finally, for Limited Control Run-of-River Hydro Resources, the derating factor is based on the rolling average of the hourly net energy provided by the resource during the 20 highest load hours in each of the prior five like Capability Periods.

C. NYISO's BSM Rules

9. NYISO's BSM Rules apply only to new capacity resources entering the ICAP Auctions in New York City and the Lower Hudson Valley (i.e., the Mitigated Capacity Zones).[20] The BSM Rules do not apply to new capacity resources entering the broader NYCA footprint, including the Rest of State[21] and Long Island load zones, nor do they apply to existing capacity resources.

10. Further, NYISO's BSM Rules apply only to new capacity resources entering the Spot Market Auction because it is the only mandatory ICAP Auction.[22] NYISO's BSM Rules provide that, unless exempt from mitigation, new capacity resources must enter the Mitigated Capacity Zones at a price at or above the applicable offer floor and continue to offer at or above that price until their capacity clears 12, not necessarily consecutive, monthly Spot Market Auctions.[23] Until then, mitigated capacity

[19] *Id.* § 5.12.6.2; *see also* Transmittal at 14-15.

[20] Localities are areas within the NYCA that have transmission constraints and for which NYISO has established a minimum level of ICAP that must be maintained. The Localities in NYISO are: Zone J (New York City); Zone K (Long Island); and Zones G, H, I, and J (collectively, the G-J Locality) (the Lower Hudson Valley and New York City). NYISO, NYISO Tariffs, NYISO MST, 2.12 Definitions - L (11.0.0).

[21] The Rest of State load zone includes all load zones other than the G-J Locality and Long Island.

[22] NYISO, NYISO Tariff, NYISO MST, Attach. H - ISO Market Power Mitigation Measures, § 23.4.5.7 (Buyer-Side Market Power Mitigation Measures for Installed Capacity) (5.0.0).

resources may participate only in the Spot Market Auction. Once they have cleared those 12 Spot Market Auctions, the offer floor no longer applies and they may, at that time, participate in any of NYISO's ICAP Auctions.[24]

11. A new capacity resource is exempt from NYISO's BSM Rules if it qualifies for a generic exemption or passes one of the two parts of the mitigation exemption test, "Part A"[25] (which assesses NYISO's projected ICAP Market supply and demand conditions), or "Part B"[26] (which assesses unit-specific costs). If a new capacity resource passes either test, it may offer into the ICAP Auction below the applicable offer floor.[27]

12. Generic exemptions to NYISO's BSM Rules also are available for qualifying: (1) renewable resources (Renewable Exemption);[28] (2) self-supply resources (Self-Supply Exemption);[29] and (3) competitive entrants (Competitive Entry Exemption).[30] NYISO's BSM Rules also apply to Special Case Resources, a type of demand response resource in

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[23] *Id*.

[24] *Id*.

[25] NYISO, NYISO Tariff, NYISO MST, Attach. H - ISO Market Power Mitigation Measures, § 23.4.5.7.2 (3.0.0).

[26] *Id*.

[27] *See generally N.Y. Indep. Sys. Operator, Inc*., 172 FERC ¶ 61,206, at P 2 (2020), *order on reh'g*, 178 FERC ¶ 61,101 (2022).

[28] *See* NYISO, NYISO Tariff, NYISO MST, Attach. H - ISO Market Power Mitigation Measures, § 23.4.5.7.13 (6.0.0) (Renewable Exemption); *see also N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121, *order addressing arguments & compliance*, 172 FERC ¶ 61,058 (2020) (accepting compliance filing to exempt a narrowly defined set of renewable and self-supply resources and directing further compliance filing) (together, NYISO 2020 BSM Compliance Orders), *review pending sub nom. N.Y. Power Auth. v. FERC*, No. 20-1302 (D.C. Cir. Aug. 13, 2020).

[29] *See* NYISO, NYISO Tariff, NYISO MST, Attach. H - ISO Market Power Mitigation Measures, § 23.4.5.7.14 (Self-Supply Exemption) (4.0.0); *see also* NYISO 2020 BSM Compliance Orders, *supra* note 28.

[30] *See* NYISO, NYISO Tariff, NYISO MST, 23.4.5.7.9 MST Attach. H – ISO Market Power Mitigation Measures, § 23.4.5.7.9 (Competitive Entry Exemption) (3.0.0); *see also Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139 (*ConEd*), *order on clarification, reh'g, and compliance*, 152 FERC ¶ 61,110 (2015).

NYISO.

II. NYISO's Filing

13. Briefly, NYISO proposes to: (1) exclude new capacity resources that "serve CLCPA objectives" from application of NYISO's BSM Rules, recognizing New York State's reserved authority under FPA section 201 to address its resource mix;[31] (2) adopt a marginal capacity accreditation market design that more accurately values ICAP Suppliers' contributions to resource adequacy; and (3) revise its ICAP Demand Curve to calculate the UCAP reference point price using the derating factor of the reference peaking plant rather than the system-wide or Locality-wide derating factor.[32] The sections below discuss the specifics of these proposals.

14. NYISO requests an effective date for its tariff revisions of May 11, 2022.[33] However, NYISO explains that its proposed tariff language implements the marginal capacity accreditation market design and ICAP Demand Curve changes starting with the Capability Year beginning May 1, 2024.[34]

III. Notice of Filing and Responsive Pleadings

15. Notice of the filing was published in the *Federal Register*, 87 Fed. Reg. 1743 (Jan. 12, 2022), with interventions and protests due on or before January 26, 2022. Appendix A identifies entities that submitted notices of intervention, motions to intervene, protests, comments, and/or answers.

16. On February 9, 2022, Commission staff issued a deficiency letter seeking additional information related to various technical and implementation details of NYISO's proposal, with NYISO's response due on or before March 11, 2022.

17. NYISO filed its Deficiency Letter Response on March 11, 2022. Notice of NYISO's Deficiency Letter Response was published in the *Federal Register*, 87 Fed. Reg. 15,418 (Mar. 18, 2022), with interventions and protests due on or before April 1, 2022. Parties that submitted notices of intervention, motions to intervene, protests,

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[31] Transmittal at 3, 29; *see* 16 U.S.C. § 824.

[32] Transmittal at 2-5.

[33] NYISO Deficiency Letter Response (Deficiency Letter Response) at 1. In its initial filing, NYISO requested an effective date of Mach 6, 2022, and then amended its requested effective date in its Deficiency Letter Response to May 11, 2022.

[34] Transmittal at 48-49.

comments, and/or answers to the Deficiency Letter Response are also identified in Appendix A.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant the late-filed motions to intervene given the interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

21. We accept NYISO's filing, to be effective May 11, 2022, as requested. As discussed in more detail below, we find NYISO's proposed tariff revisions to be just and reasonable and not unduly discriminatory or preferential because: (1) NYISO's proposal to exclude new capacity resources that further the goals of the CLCPA from application of its BSM Rules will allow NYISO's ICAP Auctions to reflect New York State's right to plan its generation mix while still protecting against the exercise of buyer-side market power; (2) NYISO's proposed marginal capacity accreditation market design will accredit all resources based on an objective measure of their incremental contribution to resource adequacy; (3) NYISO's proposal to effectuate its marginal capacity accreditation market design is sufficiently detailed to comply with the Commission's rule of reason; and (4) NYISO's proposed changes to its ICAP Demand Curves will better reflect the characteristics of the reference peaking plant, thus ensuring economically efficient ICAP Market outcomes.

22. For the reasons discussed below, we direct NYISO to submit a compliance filing within 30 days of the issuance date of this order to correct the use of the term "Adjusted Installed Capacity" in its UCAP requirement formulas to use the term "Installed Capacity" instead. We also direct NYISO to submit a one-time informational filing in this docket within 90 days of the completion of its "Phase 2" stakeholder process to report on the final implementation details.

1. Proposed Reforms to NYISO's BSM Rules

a. Filing

23. NYISO explains that, under its proposal, the core components of the BSM Rules would remain in effect to address the potential exercise of buyer-side market power by new capacity resources in the same way they do today.[35] However, NYISO proposes to revise its BSM Rules to better accommodate New York State's policy objectives specified in the CLCPA.[36] Specifically, NYISO proposes to exclude new capacity resources that are required to satisfy the goals specified in the CLCPA from application of the BSM Rules, eliminating the offer floor for such resources. NYISO explains that its proposal would automatically exclude wind, solar, storage, hydroelectric, geothermal, fuel cells that do not use fossil fuel, and demand response resources from application of its BSM Rules. NYISO states that it would also exclude additional types of new capacity resources that self-certify that any of the following conditions apply: (1) the technology type is specifically identified by the CLCPA or is publicly identified by New York State as supporting the goals of the CLCPA; (2) the resource has a contract with the New York State Energy Research and Development Authority (NYSERDA) supporting the goals of the CLCPA; or (3) the resource is eligible to receive a contract authorized by New York State or its agents, such as NYSERDA, that supports the goals of the CLCPA. NYISO states that the self-certification procedures for these resources would be comparable to the self-certification rules that the Commission accepted for NYISO's existing Competitive Entry Exemption and Self-Supply Exemption.

24. NYISO proposes to eliminate the Renewable Exemption, which applies to wind and solar resources, because it would become duplicative with the wider proposed exclusion of CLCPA resources from the BSM Rules.[37] NYISO clarifies that it would maintain the other existing exemptions under the BSM Rules, including the Competitive Entry Exemption and the Self-Supply Exemption. Further, NYISO states that the currently effective mitigation exemption tests, including Part A and Part B, would still be performed for new capacity resources subject to the BSM Rules consistent with how they are currently applied.

25. NYISO explains that it retained Analysis Group, Inc. to conduct a study (AGI Study) of NYISO's proposed changes to the BSM Rules. According to NYISO, the AGI Study found that NYISO's ICAP Auctions would continue to produce competitive market outcomes and retain sufficient capacity to meet reliability needs as the resource mix evolves.[38] NYISO explains that the AGI Study considered both New York State

[35] *Id.* at 3-4.

[36] *Id.* at 19-20.

[37] *Id.* at 20.

regulatory actions and market dynamics to estimate changes to the NYISO resource fleet between 2022 and 2026, including: (1) a decrease in fossil-fueled resources of 2,384 MW; (2) an increase in onshore wind resources of 244 MW; (3) an increase in offshore wind resources of 1,200 MW; (4) an increase in grid-connected solar photovoltaic resources of 5,000 MW; and (5) an increase in battery storage resources of 1,571 MW.[39] Furthermore, NYISO explains that the AGI Study considered a series of sensitivities that incorporated potential changes to the NYISO capacity market supply and demand curves though 2032. NYISO explains that the AGI Study simulated the effect of these projected changes to the ICAP Spot Market Auction clearing prices assuming that wind, solar, and storage resources were assigned UCAP values consistent with their marginal capacity value assumed in NYISO's June 2020 Grid in Transition analysis,[40] which NYISO asserts are consistent with the values they would be assigned under NYISO's proposed marginal capacity accreditation market design. Given the AGI Study's finding that NYISO's capacity market would continue to produce competitive outcomes and maintain resource adequacy under the proposed reforms, NYISO argues that there is substantial evidence that its proposed reforms are just and reasonable.[41]

26. NYISO asserts that its proposal would prevent what it describes as potential suppressive price effects that could affect the justness and reasonableness of its capacity market prices.[42] NYISO argues that the Commission has consistently held that price suppression is not *per se* unlawful, but rather that buyer-side market power mitigation measures must balance investor and consumer interests.[43] For example, NYISO explains that the Commission held that ISO New England Inc.'s (ISO-NE) renewable exemption was not unjust and unreasonable because it was consistent with ensuring that price signals are sufficient to meet ISO-NE's reliability requirements at least cost, even though it had the potential to allow for price suppression.[44] NYISO adds that the D.C. Circuit

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[38] *Id.* at 20-21.

[39] *Id.* at 21.

[40] *Id.* (citing Brattle Group, *New York's Evolution to a Zero Emission Power System: Modeling Operations and Investment Through 2040 Including Alternative Scenarios* (June 22, 2020), https://www.brattle.com/insights-events/publications/new-yorks-evolution-to-a-zero-emission-power-system-modeling-operations-and-investment-through-2040-including-alternative-scenarios/).

[41] *Id.* at 25.

[42] *Id.* at 26.

[43] *Id.* (citing *Wis. Pub. Power Inc. v. FERC*, 493 F.3d 239, 262 (D.C. Cir. 2007) (per curiam) (*Wis. Pub. Power*)).

upheld the Commission's decision regarding ISO-NE's renewable exemption, finding that "the Commission reasonably balanced the potential for limited price suppression against competing interests in concluding that the renewable exemption to the minimum offer price rule is consistent with the purpose of the forward capacity market."[45] NYISO states that the Commission performed a similar balancing analysis in its orders accepting ISO-NE's Competitive Auctions with Sponsored Policy Resources proposal.[46] Further, NYISO contends that the Commission engaged in a similar balancing analysis in the orders that resulted in NYISO's current Renewable Exemption.[47] NYISO asserts that the instant proposal strikes a comparable balance between avoiding artificial price suppression and over-mitigation.

27. Furthermore, NYISO argues that its proposal reasonably accommodates New York State's jurisdiction over "facilities used for the generation of electric energy" under FPA section 201.[48] NYISO argues that the FPA explicitly grants the states jurisdiction over resource adequacy and resource mix determinations and that, because NYISO is a single state independent system operator (ISO), there is no risk that New York State's policy choices will affect customers in other states. NYISO argues that its proposal would balance the risks of over-mitigation against the risk of under-mitigation to ensure just and reasonable rates while accommodating New York State policies.

28. Finally, NYISO argues that its proposal would provide a legally durable solution to the tension between protecting Commission-jurisdictional markets and accommodating state policies.[49] NYISO contends that its proposal can be reconciled with prior precedent. Specifically, NYISO explains that, while the Commission has previously denied complaints that would have established broad exemptions from the BSM Rules for state-sponsored resources, the Commission expressly rejected those proposals without prejudice.[50] Further, NYISO explains that the Commission's rejection of those proposals

[44] *Id.* (citing *ISO New Eng. Inc.*, 155 FERC ¶ 61,023, at P 35 (2016), *on reh'g*, 158 FERC ¶ 61,138 (2017), *aff'd sub nom., NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018) (*NextEra*)).

[45] *Id.* at 27 (quoting *NextEra*, 898 F.3d at 21).

[46] *Id.* at 27-28 (citing *ISO New Eng. Inc.*, 162 FERC ¶ 61,205 (2018), *order on reh'g*, 173 FERC ¶ 61,161 (2020)).

[47] *Id.* at 28-29; *see N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at P 47 (2015), *reh'g denied*, 154 FERC ¶ 61,088 (2016).

[48] Transmittal at 29-31.

[49] *Id.* at 31-32.

was based on determinations that the complainants had failed to satisfy their burden of proof under FPA section 206.[51] Finally, NYISO notes that those proposals were not supported by capacity accreditation improvements.

b. Responsive Pleadings

29. No party protests NYISO's proposed revisions to the BSM Rules. AEMA, CEAs, City of New York, Equinor, Key Capture, and New York State Public Service Commission and NYSERDA (collectively, State Entities), support the proposed revisions to the BSM Rules and argue that the existing BSM Rules as applied to state-sponsored resources are unjust and unreasonable.[52] EPSA, IPPNY, the MMU, NYTOs, PEAK Coalition, Ravenswood, and Vistra support NYISO's proposed revisions but do not allege that the existing BSM Rules are unjust and unreasonable.[53]

30. State Entities, City of New York, CEAs, AEMA, and Key Capture agree with NYISO that continued application of the BSM Rules to state-sponsored resources would lead to inefficient outcomes in NYISO's ICAP Auctions. For example, State Entities allege that the failure to ensure that CLCPA resources are not subject to the BSM Rules would have enormous cost impacts on New York State consumers and that their exemption is therefore justified as a matter of law and economics.[54] State Entities explain that an economic impact evaluation conducted by The Brattle Group found "that by 2030, and relative to a No BSM scenario, estimated customer costs increase: (1) by $400 million to $900 million per year if the 'status quo' is retained; and (2) by $1.3 billion to $2.8 billion per year if [NYISO] shifts to an Expanded BSM structure."[55]

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[50] *Id.* (citing *N.Y. Pub. Serv. Comm'n*, 153 FERC ¶ 61,022; *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,119, *order on reh'g*, 173 FERC ¶ 61,060 (2020) (NYPSC v. NYISO Rehearing)).

[51] 16 U.S.C. § 824e.

[52] AEMA Comments at 2; CEAs Comments at 25-29; City of New York Comments at 1; Equinor Comments at 1; Key Capture Comments at 1-2; State Entities Comments at 4.

[53] EPSA Comments at 3-5; IPPNY Comments 3-6; MMU Comments at 15-16; NYTOs Comments at 2-3; PEAK Coalition Comments at 2; Ravenswood Comments at 5-6; Vistra Comments at 2 n.3.

[54] State Entities Comments at 14.

[55] *Id.* at 14-15 (citing Brattle Group, *Quantitative Analysis of Resource Adequacy Structures*, at 3-5 (July 1, 2020), https://www.brattle.com/insights-events/publications/quantitative-analysis-of-resource-adequacy-structures/ (Brattle

CEAs argue that application of the BSM Rules to state-sponsored resources results in other undesirable consequences, including: (1) depriving state-sponsored resources of revenues commensurate with their capacity value; (2) creating incentives to develop excess capacity; (3) artificially inflating capacity market prices, resulting in a wealth transfer from consumers to suppliers; and (4) expanding the disconnect between the capacity market and resources actually operating on the transmission system over time as CLCPA requirements expand.[56] Further, City of New York argues that the BSM Rules have served to chill new entry and protect incumbent generators' market share, and as a result, New York City must rely on a fleet of old, inefficient, polluting fossil-fueled generators.[57]

31. Several parties argue that NYISO's proposal will appropriately balance state jurisdiction over the generation mix with the need to ensure just and reasonable wholesale rates. For example, the MMU argues that NYISO's proposal would retain protections against the exercise of buyer-side market power in the ICAP Market while allowing the state to pursue its legitimate policy objectives.[58] City of New York argues that the proposed changes will facilitate more robust competition in the capacity market and notes that the proposal would not eliminate the BSM Rules but rather limit their application to the purpose of protecting customers, the markets, and other market participants from actions by entities with the capability to exercise buyer-side market power.[59] State Entities argue that the Commission's objective of promoting wholesale competition does not mean nullifying the wholesale market effects of state and local laws regarding environmental protection.[60] State Entities state that they share and support NYISO's position that CLCPA resources should not be subject to NYISO's BSM Rules because over-mitigation of CLCPA resources will result in higher costs to consumers and market inefficiency.[61] CEAs argue that NYISO's proposed revisions would properly focus the application of NYISO's BSM Rules on actual exercises of buyer-side market power by correctly defining state compensation for environmental attributes as a

Report)). For purposes of the study, a "No BSM" scenario would include a centralized, state-sponsored resource adequacy construct and an "Expanded BSM" would include a structure in which the BSM Rules were extended to all NYISO zones. *Id.*

[56] CEAs Comments at 28-29.

[57] City of New York Comments at 2.

[58] MMU Comments at 5.

[59] City of New York Comments at 3-5.

[60] State Entities Comments at 12-13.

[61] *Id.* at 2.

competitive advantage held by the seller rather than an exercise of buyer-side market power.[62]

32. Furthermore, several parties argue that NYISO's proposal is consistent with reserving New York State's right to determine its generation mix under FPA section 201. State Entities explain that, while the Supreme Court has found that states cannot set rates for interstate wholesale electricity sales, the Court has repeatedly affirmed states' authority over generation and retail sales.[63] State Entities further argue that FPA section 215[64] reinforces this reservation of state authority because it provides that the Commission's authority does not extend to standards to ensure adequate supply of generation facilities.[65] State Entities argue that several previous Commission orders have mischaracterized revenues that resources receive from legitimate state programs as "subsidies" that "distort" competitive wholesale markets.[66] State Entities contend that these previous orders pursued "an idealized vision of markets free from the influence of public policies," although neither the FPA nor Commission policy requires that the Commission attempt to create such a perfect market by nullifying or penalizing state policy.[67] CEAs state that NYISO's proposed reforms to the BSM Rules would put an end to the unjust, unreasonable, and unduly discriminatory rates that result from the application of the BSM Rules to state sponsored resources, and put an end to years of changing policy and litigation as a result of the conflict between the BSM Rules and legitimate state energy policy goals.[68]

33. While no party protests NYISO's proposed changes to the BSM Rules, commenters disagree about whether the capacity accreditation reforms included in the instant filing are necessary for the changes to the BSM Rules to be just and reasonable. State Entities, CEAs, and Equinor argue that the capacity accreditation reforms are not necessary to demonstrate that the changes to the BSM Rules are just and reasonable. For example, CEAs argue that NYISO's current BSM Rules are harmful regardless of

[62] CEAs Protest at 42-47.

[63] State Entities Comments at 4-5 (citing *Hughes v. Talen Energy Mktg. LLC*, 136 S. Ct. 1288, 1300 (2016) (Sotomayor, J. concurring)).

[64] 16 U.S.C. § 824o.

[65] State Entities Comments at 5 (citing 16 U.S.C. §§ 824o(a)(i)(1), (i)(2)).

[66] *Id.* at 8.

[67] *Id.* (quoting *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137 (2017) (Bay, Comm'r, concurring at 2)).

[68] CEAs Protest at 25-28.

NYISO's capacity accreditation process, and therefore they should be remedied regardless of NYISO's capacity accreditation proposal.[69] Similarly, State Entities contend that state efforts to promote new renewable generation or energy storage resources should be treated as natural effects of state regulation of electricity production and retail consumption contemplated by the FPA, and therefore the Commission should not accept NYISO's proffered rationale that the BSM reforms are acceptable only when coupled with the proposed capacity accreditation mechanism.[70]

34. In contrast, several parties argue that the proposed capacity accreditation changes are a necessary complement to the revised BSM Rules.[71] For example, IPPNY contends that it has demonstrated in multiple Commission dockets that, absent adequate balance, capacity market price suppression caused by the entry of state-sponsored resources will undermine the functionality of competitive wholesale markets.[72] However, IPPNY supports a Commission finding that NYISO's filing is just and reasonable, in light of NYISO's proposed marginal capacity accreditation revisions.[73] Similarly, Vistra supports NYISO's proposal but emphasizes that NYISO's proposed capacity accreditation reforms are necessary to maintain the integrity of the capacity market.[74] In response to arguments to the contrary, NYISO argues that its filing is clear that marginal accreditation improvements validate excluding resources that serve CLCPA goals from application of the BSM Rules. Further, NYISO states that the MMU has made the same point, arguing that excluding CLCPA resources from application of the BSM Rules alone "would be more likely to result in a chronic surplus of capacity that will undermine the market's ability to efficiency satisfy NYISO's resource adequacy needs."[75]

c. Determination

35. We find that NYISO's proposed revisions to its BSM Rules are just and reasonable and not unduly discriminatory or preferential.[76] NYISO has met its burden to

[69] *Id.* at 49-52.

[70] State Entities Comments at 3.

[71] EPSA Comments at 3-5; GenOn Comments at 7 n.21; IPPNY Comments at 1-2; MMU Comments at 15; NYTOs Comments at 1-3; Ravenswood Comments at 5-6; Shell Comments at 2-3, 13-14; UIU Comments and Answer at 4-5; Vistra Comments at 3.

[72] IPPNY Comments at 3.

[73] *Id.* at 6.

[74] Vistra Comments at 1-2.

[75] NYISO March Answer at 8 (citing MMU Comments at 15).

show that the proposed revisions appropriately balance the need to mitigate the potential exercise of buyer-side market power against the harms of over-mitigation. The BSM Rules were first implemented in 2008 to protect the capacity market against the potential exercise of buyer-side market power.[77] Buyer-side market power, as originally defined and applied in NYISO's ICAP Market, was applied to a buyer that possessed the incentive and ability to artificially depress the capacity price below competitive levels and thereby benefit its own position in the capacity market.[78] In early orders, the Commission made clear that mitigation rules must address anticompetitive activity by actual buyers—i.e., entities that actually purchased capacity in the ICAP market.[79] In subsequent years, however, the Commission expanded its concern to include the ability of "buyers or their agents" to exercise buyer-side market power to reduce capacity market prices below competitive levels by paying "out-of-market subsidies" to support new capacity.[80] In particular, in recent years, the Commission greatly expanded the scope of NYISO's BSM Rules by focusing on the potential for capacity resources, in the aggregate, to suppress capacity market prices below competitive levels due to state policies that support their development.[81]

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[76] While parties debate whether NYISO's proposed changes to the BSM Rules require concurrent changes to NYISO's proposed capacity accreditation methodology in order to be just and reasonable, we decline to address these arguments because we accept NYISO's proposal in its entirety.

[77] Transmittal at 8.

[78] *See, e.g.*, *ConEd*, 150 FERC ¶ 61,139 at P 2 (explaining that circumstances in which buyers or their agents can exercise buyer-side market power to reduce capacity market prices below competitive levels by paying out-of-market subsidies to support new capacity, and then offer that capacity into the organized capacity market at prices below costs to decrease the market price below competitive levels can harm competition in the capacity markets and produce unjust and unreasonable wholesale rates by artificially depressing the capacity price).

[79] *See, e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at P 106 (requiring NYISO to specify in its proposed tariff language that the mitigation of uneconomic entry applies only to net buyers bringing uneconomic capacity into the market), *order on reh'g*, 124 FERC ¶ 61,301 (2008), *order on reh'g and compliance*, 131 FERC ¶ 61,170, at P 54 (2010) (finding that the buyer mitigation provision need not expressly require that the mitigated entity be a buyer since only a capacity buyer could profit from procuring new, uneconomic generation capacity in order to drive down the price of capacity it buys).

[80] *ConEd*, 150 FERC ¶ 61,139 at P 2.

36. The record before us indicates that the expanded scope of the BSM Rules comes at a considerable cost. As discussed below, the current BSM Rules may increase costs, over-procure capacity, and distort ICAP price signals. Moreover, as NYISO explains, the current BSM Rules may significantly interfere with New York State's ability to meet its policy objectives by mitigating new entrants, including resources developed to meet the CLCPA's requirements.[82] Accordingly, based on the record before us, we agree with NYISO that it is appropriate to change course and exclude resources that serve the CLCPA's objectives from the BSM Rules. Doing so not only avoids the harms associated with over-mitigation, but also focuses buyer-side market power mitigation on those resources most likely to behave uncompetitively through the exercise of buyer-side market power.

37. We acknowledge that in accepting NYISO's proposal, we are changing policy from previous Commission decisions regarding NYISO's BSM Rules. Under the Administrative Procedure Act, the Commission may re-evaluate a prior policy and subsequently reach a different conclusion, provided that "the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better."[83] In the following paragraphs, we explain why we believe today's order satisfies that standard.

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[81] *NYPSC v. NYISO*, 170 FERC ¶ 61,119 at P 39; NYPSC v. NYISO Rehearing, 173 FERC ¶ 61,060 at PP 19, 23; *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022 at P 79. Nevertheless, over the years, the Commission accepted or required exemptions to the BSM Rules where it found that resources lacked the incentive and ability to artificially suppress capacity market prices, in order to ensure that NYISO's BSM Rules strike a balance between avoiding the risks of exercises of buyer-side marker power and the harm of overly restrictive BSM Rules, both of which pose a threat to competitive markets. *See, e.g.*, *ConEd*, 150 FERC ¶ 61,139 at PP 4, 45 (finding application of NYISO buyer-side mitigation rules to resources that lack the incentive to suppress capacity market prices is unjust and unreasonable); *N.Y. Pub. Serv. Comm'n*, 153 FERC ¶ 61,022 at P 36 (finding application of NYISO buyer-side mitigation rules to resources that have limited or no incentive and ability to exercise buyer-side market power unjust, unreasonable, or unduly discriminatory or preferential).

[82] Transmittal at 3-4; *see also* IPPNY Comments at 4; Key Capture Comments at 1; NYISO March Answer at 7 ("There is unanimous support for the NYISO's proposed revisions to the BSM Rules. . . . There is also universal agreement, including by parties that have expressed concerns about the marginal accreditation design, that the BSM Rules should be modified in time for the upcoming Class Year 2021 interconnection study process. Otherwise there is a risk that projects that support CLCPA objectives could be over-mitigated. All parties agree that this outcome must be avoided."); NYTOs Comments at 4; Ravenswood Comments at 20-21; State Entities Comments at 14-16.

38. As an initial matter, no party contends that NYISO's proposal is inconsistent with the FPA. We recognize that the Commission's approach to these issues has taken many different forms over the years, with NYISO being perhaps the most poignant example of those shifts.[84] Today's order is, in many respects, a return to the approach adopted in the

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[83] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (stating that an agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates"); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) ("An agency's view of what is in the public interest may change, either with or without a change in circumstances.") (internal citations omitted); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 100 (3rd Cir. 2014) (*NJBPU*) (noting that "[c]ourts have repeatedly held that an agency may alter its policies despite the absence of a change in circumstances" (citing *Motor Vehicle Mfrs. Ass'n of U. S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 57); *Tenn. Gas Pipeline Co.*, 105 FERC ¶ 61,120, at P 35 (2003) (stating that the Commission's prior acceptance of tariff provisions does not preclude the Commission from reconsidering its policies), *aff'd Tenn. Gas Pipeline Co. v. FERC*, 400 F.3d 23 (D.C. Cir. 2005).

[84] *See, e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at PP 100-106 (accepting NYISO's proposed BSM Rules on condition that they apply to only net buyers, explaining that "[l]arge net buyers may have both the incentive and the ability to depress prices through uneconomic entry"), *order on reh'g*, 124 FERC ¶ 61,301 at P 29 (reversing the requirement that the BSM Rules apply to only net buyers). The history of the application of NYISO's BSM Rules to demand response resources is particularly complicated: (1) in 2008, the Commission accepted NYISO's proposal to apply the BSM Rules to certain demand response resources; (2) in 2010, the Commission accepted NYISO's proposal to exclude from the offer floors of those resources payments received from retail-level demand response programs; (3) in 2015, the Commission reversed course and stated that it would exclude payments from particular programs based on FPA section 206 filings; (4) in 2017, in response to a complaint, the Commission found that certain demand response resources "have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices," and so must be exempt from the BSM Rules; (5) in 2020, the Commission again reversed course, granting rehearing to find that those resources should be subject to the BSM Rules, but that payments from certain programs should be excluded from their offer floors; and (6) in 2021, the Commission excluded payments from additional programs. *See N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,120, at PP 3-7, 16 (detailing the history of applying NYISO's BSM Rules to certain demand response resources and granting rehearing), *order on reh'g & compliance*, 173 FERC ¶ 61,022 (2020) (based on paper hearing, excluding payments from specific retail-level demand

Commission's earliest BSM orders, which, as noted, focused on the exercise of buyer-side market power by market participants rather than attempting to block or mitigate the effects of state public policies.[85]

39. We also find that NYISO's proposed revisions to its BSM Rules strike a more appropriate balance between the harms of over- and under-mitigation and are well-supported by the record before us. In particular, we find that NYISO's proposal reduces the risk, present under the current BSM Rules, of at least three significant harms: over-procurement of capacity, inflated capacity market prices, and inefficient price signals from the capacity market.[86] First, because the CLCPA mandates the development

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response programs from offer floors), *order on reh'g*, 174 FERC ¶ 61,110 (2021) (setting aside prior order and excluding payments from additional retail-level demand response programs). For the competitive entry exemption, see *ConEd*, 150 FERC ¶ 61,139 at PP 2-4 (stating that the application of NYISO's BSM Rules to all new capacity "has resulted in mitigation of certain resources that can derive no benefit from lower prices" (i.e., competitive unsubsidized merchant resources) despite the original purpose of those rules, namely, "to address . . . the market power exhibited by entities seeking to lower capacity market prices for the capacity they buy"). For the renewable resources and self-supply resources exemptions, see *N.Y. Pub. Serv. Comm'n*, 153 FERC ¶ 61,022 at P 10 (requiring NYISO to exempt from its BSM Rules "certain renewable and self-supply resources that have limited or no incentive and ability to artificially suppress ICAP market prices," reasoning that such rules "are intended to address market power exhibited by certain entities seeking to lower capacity market prices"), and *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121 (accepting in part, subject to condition, and rejecting in part NYISO's April 2016 compliance filing implementing the renewable resources and self-supply resources exemptions). For orders related to the application of the BSM Rules to energy storage resources, see *NYPSC v. NYISO*, 170 FERC ¶ 61,119 at PP 37, 39 (denying complaint alleging that energy storage resources developed to meet New York State's energy and environmental goals should not be subject to NYISO's BSM Rules, finding instead that applying the BSM Rules to electric storage resources "appropriately protects the capacity market from the price suppressive effects of resources receiving out-of-market" state support). And, finally, for the application of the BSM Rules to existing resources, *see Indep. Power Producers of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 (2015) (denying complaint asking that NYISO's BSM Rules be applied to "existing capacity resources," but directing "NYISO to establish a stakeholder process to consider whether mitigation measures are needed"), *order on reh'g*, 170 FERC ¶ 61,118 (2020) (granting in part and denying in part clarification and rehearing).

[85] *See supra* P 35.

[86] Transmittal at 3, 26; *see also* Key Capture Comments at 2.

of these new resources, these resources will likely be developed and available to contribute to meeting NYISO's resource adequacy needs, regardless of whether they clear the capacity market. But these resources' contributions to resource adequacy in NYISO could be effectively ignored in the ICAP Market to the extent the current BSM Rules prevent them from clearing.[87] If so, the capacity market would be forced to clear surplus resources—i.e., those that clear only because the CLCPA resources are ignored—which are not actually needed to maintain resource adequacy.[88] And while those surplus resources would not be needed to meet NYISO's resource adequacy requirements, consumers would still be required to pay their capacity costs. Second, not only might consumers pay for unneeded capacity, they will also pay higher capacity prices to procure it.[89] If a resource does not clear due to the application of the existing BSM Rules, it will be replaced by a resource with a higher-priced offer, which will raise the market clearing price insofar as it causes a more expensive resource to clear on the margin than would otherwise occur.[90]

40. The record before us indicates that these risks are present under the current BSM Rules. For example, the Brattle Group's analysis projects that New York State consumers would face additional costs of $400-$900 million per year by 2030 under NYISO's existing BSM Rules[91]—costs that will be avoided under NYISO's proposed

[87] CEAs Protest, Ex. A at 19 ("All policy-supported resources that physically supply resource adequacy could be excluded from being counted in the capacity market, while the capacity market would remain a multi-billion-dollar-per-year 'shadow market' that exists primarily to pay resources that are not actually needed for resource adequacy.").

[88] *Id.* at 34-35; *see also* Key Capture Comments at 2,4 (explaining that the application of BSM deprives storage resources in Zones G-J of capacity payments, slowing their development, which could lead to an over-procurement of capacity); City of New York Comments at 3-4 ("Under the current rules, . . . load-serving entities could be required to procure unnecessary additional capacity. This is an inefficient outcome and arguably unduly burdensome to customers.").

[89] Transmittal at 3 ("Over-mitigation of such resources would result in needlessly higher costs to consumers, and market inefficiencies"); IPPNY Comments at 4 (agreeing with and supporting NYISO's statement); State Entities Comments at 2 (noting concerns with higher costs to consumers).

[90] CEAs Protest at 32-33 ("These resources should therefore be allowed to bid into the capacity market at a price that reflects their true value to the system . . . . The idea that mitigating state policy resources will 'correct' the market by artificially raising the prices of the most competitive resources in the system in order to prop up the least valuable generators would stand elemental market economics on its head.").

revisions.[92] And NYISO clearly explains that the extent of these risks will grow over time as more resources enter the ICAP Market in response to the CLCPA.[93]

41. Third, and relatedly, NYISO's proposed revisions will help address the concern that the existing BSM Rules are causing the ICAP Market to send price signals that do not accurately reflect the region's capacity needs.[94] As described above, the existing BSM Rules will likely cause the market to ignore certain resources, causing it to clear surplus resources at an elevated price. That dynamic, in turn, may send a price signal suggesting that new resources are needed, or that existing resources should not retire, when such resources are not in fact necessary to ensure resource adequacy. In other words, by artificially raising capacity offers, the existing BSM Rules can undermine the ICAP Market's ability to send accurate signals about supply and demand fundamentals in NYISO, which are needed to guide efficient entry and exit.[95] Taken together, these three potential harms associated with the current BSM Rules may frustrate the basic purpose of the capacity market: ensuring resource adequacy at just and reasonable rates.

[91] State Entities Comments at 15 (citing Brattle Report at 5); *see also* Key Capture Comments at 4 (stating that "NYISO's current rules result in procurement of redundant capacity, inflate costs for customers, and fail to accommodate state support for resources that will reduce emissions").

[92] *Id.* at 15-16; *see also* Transmittal, attach. IV at P 28 (stating that excluding resources that are part of the CLCPA implementation "will avoid over-mitigation that could make the prices paid by consumers unnecessarily high.").

[93] Transmittal at 3 ("If the BSM Rules do not evolve, they are likely to more significantly interfere with CLCPA policies by mitigating new entrants that are necessary to the achievement of New York State's policy objectives. In particular, there is cause for concern that the BSM Rules will result in over-mitigation of new intermittent and storage resources entering the capacity market as part of the NYISO's Class Year 2021 interconnection cost allocation process. Over-mitigation of such resources would result in needlessly higher costs to consumers, and market inefficiencies. The NYISO Proposal would avoid these harms.").

[94] *See ConEd*, 150 FERC ¶ 61,139 at P 5, *order on clarification, reh'g, and compliance*, 152 FERC ¶ 61,110 at P 7; *see also* Key Capture Comments at 3-4; NYTOs Comments at 6-7.

[95] *ISO New Eng., Inc.*, 162 FERC ¶ 61,205 at P 21 (finding that "A capacity market should facilitate robust competition for capacity supply obligations, provide price signals that guide the orderly entry and exit of capacity resources, result in the selection of the least-cost set of resources that possess the attributes sought by the markets, provide price transparency, shift risk as appropriate from customers to private capital, and mitigate market power.").

42. In addition, we find that NYISO's revised BSM Rules better comport with the FPA's express reservation to the states of authority over generation facilities.[96] The Commission's prior orders addressing the BSM Rules treated state policy choices as equivalent to anti-competitive conduct.[97] Upon further review, we no longer believe it appropriate to presume that states' exercise of their reserved authority over generation facilities is the equivalent of anticompetitive conduct, simply because of the inevitable, albeit indirect, effect on ICAP Market prices. Instead, we recognize that the FPA was "drawn with meticulous regard for the continued exercise of state power."[98] And we believe that market rules seeking to "hermetically seal[]"[99] NYISO's markets from the indirect effects of state policies are not necessary to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.[100]

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[96] 16 U.S.C. § 824(b)(1); *Hughes*, 136 S. Ct. at 1292 (describing the jurisdictional divide set forth in the FPA); *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 266 (2016) (explaining that "the [FPA] also limits FERC's regulatory reach, and thereby maintains a zone of exclusive state jurisdiction").

[97] *Supra* note 84; *see also Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239, at P 5 (2019) (explaining that the Commission is applying a minimum offer price rule to state-sponsored resources in order to "protect PJM's capacity market from the price-suppressive effects of resources receiving out-of-market support"); *ISO New Eng. Inc.*, 162 FERC ¶ 61,205 at P 24 ("It is . . . imperative that such a market construct include rules that appropriately manage the impact of out-of-market state support.").

[98] *Panhandle E. Pipe Line Co. v. Pub. Serv. Comm'n of Ind.*, 332 U.S. 507, 517-18 (1947).

[99] *EPSA*, 577 U.S. at 281 ("It is a fact of economic life that the wholesale and retail markets in electricity, as in every other known product, are not hermetically sealed from each other. To the contrary, transactions that occur on the wholesale market have natural consequences at the retail level. And so too, of necessity, will FERC's regulation of those wholesale matters.").

[100] Commissioner Danly cites *NJBPU* for the proposition that courts have held that mitigating the effects of state subsidies is *required* to ensure that capacity market prices in NYISO are just and reasonable. *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (2022) (Danly, Comm'r, dissenting at P 6). But that case held only that the Commission's acceptance of a PJM section 205 filing to eliminate an exception that existed for state-mandated resources from PJM's original MOPR was not arbitrary and capricious. Finding that the Commission "has adequately advanced a rationale for its about-face," the court upheld the Commission's decision to eliminate the MOPR

43. Finally, we also conclude that NYISO's proposed BSM Rules continue to appropriately address the risk of the exercise of buyer-side market power in the ICAP Market. As NYISO and the MMU explain, NYISO will retain the core features of the existing BSM Rules to protect against potential exercises of buyer-side market power by resources that do not serve the CLCPA's goals.[101] At the same time, NYISO's proposal recognizes that the CLCPA and its implementation are not, standing alone, anticompetitive behavior and therefore ought not to be mitigated, absent particularized evidence of such behavior (including the exercise of buyer-side market power) by market participants.[102] NYISO has provided sufficient evidence that, with NYISO's proposed revisions to the BSM Rules, NYISO's ICAP Auctions will continue to produce

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exemption for state-mandated resources. *NJBPU*, 744 F.3d at 102. The court did not in any way suggest that mitigation of state-mandated resources is mandatory under the FPA or that it was always necessary to prioritize preventing what the Commission described as "price suppression" over the adverse impacts of the MOPR, especially as circumstances change. *See, e.g.*, *id.* ("Our power to rein in bureaucratic behavior like this is, however, constrained. The 'arbitrary and capricious' standard of the APA is a high bar indeed, and many agency actions worthy of condemnation are not so deficient that they can be said to cross it. Such is the case here."). In other instances as well, courts have consistently recognized that decisions regarding whether and how to mitigate buyer-side market power entails "balancing competing interests," and have declined to read into the FPA a bright-line requirement to do so, instead deferring to the Commission's findings regarding the risk of anti-competitive conduct and whether that risk warrants mitigation. *See New England Power Generators Association, Inc. v. FERC*, 757 F.3d 283, at 293, 296 (D.C. Cir. 2014) (upholding Commission determination to mitigate capacity offers that suppress price because the court deferred to *the Commission's* determination that such measures were necessary to its objective "to ensure that the prices in capacity markets reflect the market cost of new entry when new entry is needed"); *NextEra*, 898 F.3d at 21 (deferring to FERC's determination that an exemption from mitigation effectuates the primary purpose of the market).

[101] Transmittal at 25; *see also* MMU Comments at 5.

[102] NYTOs Comments at 5 ("When new capacity resources serve an express public purpose such as under the CLCPA, there is not a monopsony problem."); Transmittal at 13 ("It is already apparent . . . that the CLCPA and regulations adopted under it will drive resource investment and retirement decisions and, ultimately, the composition of the overall resource mix in New York. . . . The NYISO's market rules must evolve to reflect the dominant role that CLCPA initiatives will increasingly play in shaping the resource mix in New York State."); *see also* State Entities Comments at 12 ("Promoting wholesale competition means ensuring that the wholesale rules are fair and non-discriminatory. It does not mean attempting to nullify the wholesale market effect of economic benefits and burdens created by other laws.").

competitive market outcomes and retain sufficient capacity to meet reliability needs as the resource mix evolves in the short and near term and through 2032.[103] Moreover, NYISO provides assurances that both NYISO and the MMU will continue to monitor and identify relevant market behaviors or developments that may constitute exercises of buyer-side market power, and take appropriate action as necessary.[104]

2. Marginal Capacity Accreditation Market Design

a. Filing

44. NYISO proposes to replace its current capacity accreditation procedures with a marginal capacity accreditation design that would accredit all resource types based on their marginal contribution to power system reliability, as modeled and approved by the NYSRC.[105] Specifically, NYISO proposes to define Capacity Accreditation Factors for each Capacity Resource Accreditation Class annually in advance of each new Capability Year to determine how the NYCA power system reliability would change through an addition of incremental capacity with the characteristics of the Capacity Resource Accreditation Class. As explained further below, NYISO proposes to calculate a resource's UCAP as the product of its ICAP value,[106] its Capacity Accreditation Factor, and its individual performance or availability derating factor.[107] NYISO proposes to use its current capacity accreditation procedures through the Capability Year beginning on May 1, 2023, and then implement the marginal accreditation design annually thereafter.[108]

45. As a starting point for its marginal capacity accreditation evaluations, NYISO proposes to use the IRM and LCR study models, as vetted and established through the NYSRC process.[109] NYISO explains that the supply mix assumed for the IRM model is

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[103] *See* Transmittal at 25; *see also supra* P 25.

[104] Transmittal at 25.

[105] *Id.* at 32.

[106] NYISO states that ICAP values will continue to be based upon the lesser of Dependable Maximum Net Capability or Capacity Resource Interconnection Service for most resources, with Dependable Maximum Net Capability for intermittent resources such as wind or solar continuing to be reflected as the nameplate capacity in megawatts of such facilities. *Id.* at 33.

[107] *Id.*

[108] *Id.* at 32; *see supra* PP 5-8.

[109] Transmittal at 32 (citing NYSRC, *Policy No. 5-15 Procedure for Establishing*

determined by the NYSRC in accordance with its base case inclusion rules and is fixed once the NYSRC adopts the IRM. Once it adopts the IRM, the NYSRC files the IRM with the Commission and the New York State Public Service Commission, and then NYISO uses this base case to calculate the least-cost set of LCRs for the G-J, New York City, and Long Island Localities.[110] NYISO states that the proposed annual marginal capacity accreditation process would proceed at this stage of the process, prior to the seasonal set up for the upcoming Summer Capability Period. NYISO states that its capacity accreditation study is aligned very closely with the current resource adequacy structures underlying the ICAP Auctions, and therefore will ensure that resources continue to receive ICAP payments based on their contribution to reliability as modeled in the IRM and LCR processes as well as their individual performance or availability.

46. NYISO states that it would calculate Capacity Accreditation Factors using a system Effective Load Carrying Capability (ELCC) or equivalent methodology, such as the Marginal Reliability Improvement (MRI) proposed by the MMU.[111] NYISO states that it is using the decades-old definition of ELCC: "[t]he measurement of the effective load carrying capability is made at some designated level of reliability, often the level calculated for the system in a previous year. The effective capability of a new unit is, therefore, the load increase that the system may carry with the designated reliability."[112] NYISO states that Capacity Accreditation Factors would reflect the marginal reliability contribution of the ICAP Suppliers within each Capacity Accreditation Resource Class toward meeting the NYSRC resource adequacy requirements for the upcoming Capability Year at the capacity Locality level.[113] That is, a class may have different Capacity Accreditation Factors applicable to each of the distinct capacity zones where the resources interconnect.

47. NYISO proposes to recalculate the Capacity Accreditation Factors for each Capacity Resource Accreditation Class annually for each pertinent location to keep pace with the resource changes that the CLCPA requires.[114] NYISO emphasizes that all

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New York Control Area Installed Capacity Requirements and the Installed Reserve Margin (IRM) (2020), https://nysrc.org/PDF/Policies/Policy%205-15.pdf).

[110] *Id.* at 33.

[111] *Id.* at 34 n.109.

[112] *Id.* at 34-35 (citing L.L. Garver, *Effective Load Carrying Capability of Generating Units*, IEEE Transactions on Power Apparatus and Systems, vol. PAS-85, no. 8, at 910-919 (Aug. 1966), https://dx.doi.org/10.1109/TPAS.1966.291652).

[113] *Id.* at 35.

[114] *Id.* at 34.

resource classes would be reviewed annually, including existing conventional capacity resources, which would enable flexible resources that meet the balancing needs of a system with increasing levels of intermittent supply to receive appropriate compensation that reflects their marginal contributions to system reliability. NYISO states that each Capacity Resource Accreditation Class would contain a defined set of resources, as identified in accordance with ISO Procedures, with similar technologies or operating characteristics that are expected to make similar marginal reliability contributions toward meeting the NYSRC resource adequacy requirements for the upcoming Capability Year.

48. NYISO argues that its marginal capacity accreditation design is a just, reasonable, and not unduly discriminatory improvement over its currently effective capacity valuation metrics.[115] NYISO states that marginal capacity accreditation would better tailor the calculation of the UCAP values for ICAP Suppliers to their marginal contribution to maintaining the reliability of the system when it is most needed, and thus improve the efficiency of NYISO's ICAP Market outcomes. Further, NYISO contends that its proposal would send the proper price signals for each class of resources based upon the current system configuration and which resource class is best suited to support grid reliability, regardless of whether those resources receive out-of-market payments or rely more heavily on capacity market revenues.[116]

49. NYISO explains that the MMU analyzed the tradeoffs between a marginal capacity accreditation approach and an "average" accreditation approach,[117] and the MMU concluded that average accreditation would result in severe inefficiencies and overpayment in the long term.[118] NYISO states that the MMU emphasized that marginal capacity accreditation is fundamentally consistent with NYISO's marginal cost scheduling and pricing rules, such as Locational-Based Marginal Pricing in NYISO's energy market. Further, NYISO states that the MMU explained that a marginal design would not result in capacity over-procurement because ICAP requirements are determined independently of the capacity accreditation methodology.[119] Furthermore, NYISO states that the MMU demonstrated that marginal capacity accreditation would not excessively discount intermittent and storage resources and is aligned with achieving CLCPA policies.[120] Finally, NYISO explains that the MMU analyzed the long-term

[115] *Id.* at 36.

[116] *Id.* at 37.

[117] NYISO notes that the Commission recently accepted what has been described as an average accreditation methodology in PJM. *Id.* at 36 (citing *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 (2021) (PJM ELCC II)).

[118] *Id.* at 37.

[119] *Id.* at 38 (citing Transmittal, attach. V at 7-9).

impacts of capacity accreditation on consumer costs in the NYISO-administered markets, and reached three main conclusions: (1) marginal capacity accreditation would result in more efficient investment signals and lower consumer costs when compared to continuing with the status quo; (2) marginal capacity accreditation could help guide investment in state sponsored resources at the lowest cost to consumers even when state subsidies supplement resources' wholesale market revenues; and (3) the advantages of marginal capacity accreditation will become more significant and impactful as the CLCPA requires large quantities of investment in intermittent resources.[121]

50. NYISO states that it conducted its own analysis of the marginal capacity accreditation approach and reached conclusions that are broadly aligned with the MMU's.[122] Specifically, NYISO states that its evaluation shows that a marginal capacity accreditation approach would bring benefits with respect to: (1) reliability; (2) cost impact/market efficiencies; (3) environment/new technology; and (4) transparency.[123] NYISO states that the Commission has routinely relied on economic analysis and theory when finding proposed tariff revisions to be just and reasonable, and NYISO argues that the Commission should follow that precedent here.

51. Finally, NYISO states that the proposed marginal capacity accreditation revisions justify narrowing the BSM Rules, in addition to being a major market enhancement on their own merits.[124] NYISO notes that PJM Interconnection, L.L.C. (PJM) similarly argued in revising its minimum offer price rule that improved capacity accreditation would "tend to reduce the capacity value of intermittent resources as their penetration increases," and thus substantially reduce the impact that state-sponsored entry of such resources would have on PJM's capacity auctions.[125]

b. Deficiency Letter Response

52. In its deficiency letter, Commission staff requested additional information regarding how NYISO would calculate a Capacity Accreditation Resource Class's

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[120] *Id.* (citing Transmittal, attach. V at 10-21).

[121] *Id.*; *see also* Transmittal, attach. VI.

[122] Transmittal at 38; *see also* Transmittal, attach. VII.

[123] Transmittal at 38-39.

[124] *Id.* at 39.

[125] *Id.* (citing PJM Interconnection L.L.C., Filing, Docket No. ER21-2582-000, at 19 (filed Jul. 30, 2021)).

marginal reliability contribution and how the resource mix considered in the NYSRC's IRM model compares to the resource mix that clears the ICAP Auctions.[126]

53. In response, NYISO explains that it would calculate a Capacity Accreditation Resource Class's marginal reliability contribution using either the ELCC technique or the MMU's proposed MRI technique. Specifically, NYISO explains that, using a system ELCC technique, it would add an incremental unit of a Capacity Accreditation Resource Class to the final LCR database in a given capacity location and record the NYCA Loss of Load Expectation (LOLE).[127] NYISO states that, using an iterative process, it would then remove "perfect capacity"[128] in the same location until the system returns to the starting LOLE of the LCR database. NYISO explains that this technique would be repeated for each Capacity Accreditation Resource Class and each capacity location where an ICAP Supplier or projected ICAP Supplier exists in the given Capacity Accreditation Resource Classes. According to NYISO, the marginal reliability contribution is the direct output of the ELCC technique, and more specifically the Capacity Accreditation Factor would be calculated as the ratio of the size (in megawatts) of perfect capacity removed to the size (in megawatts) of the incremental unit added. NYISO adds that, because the incremental unit of the Capacity Accreditation Resource Class under review cannot be more reliable than perfect capacity of the same size, the ELCC technique will produce a value less than or equal to 100%.

54. NYISO explains that, using the MRI technique, NYISO would add an incremental unit of a Capacity Accreditation Resource Class to the final LCR database, given a starting LOLE (Initial LOLE).[129] NYISO explains that it would then record the resulting LOLE (Marginal LOLE) from the addition of that incremental unit. NYISO further explains that the incremental unit would be removed and replaced with a perfect capacity unit of the same size in the same location and the resulting LOLE would be recorded (Perfect LOLE). NYISO states that the marginal reliability contribution of each Capacity Accreditation Resource Class would be calculated as the ratio of the difference of its Initial LOLE and Marginal LOLE to the difference of its Initial LOLE and Perfect LOLE. NYISO states that the ELCC and MRI techniques are fundamentally similar applications of the same method for determining the marginal reliability contributions of resource classes; however, the MRI technique is expected to be less computationally complex and time consuming.[130] NYISO states that it has not yet compared results of the

[126] Deficiency Letter at 4-5.

[127] Deficiency Letter Response at 7.

[128] NYISO states that perfect capacity is generally understood for ELCC purposes as capacity that is dispatchable and always available for whatever duration a reliability event requires. *Id.*

[129] *Id.* at 8.

MRI technique to the ELCC technique, and NYISO clarifies that it would only adopt the MRI technique if it is shown to produce Capacity Accreditation Factors that are consistently comparable to the Capacity Accreditation Factor results of the ELCC technique.

55. NYISO explains that the NYSRC base case inclusion rules and modeling of scenarios result in an IRM model that ensures that the qualifying resource mix used to set the IRM matches the resources that actually provide ICAP in the Capability Year.[131] NYISO further explains that it will establish Capacity Accreditation Resource Classes for resources and/or aggregations with similar technologies and operating characteristic criteria that are expected to influence marginal reliability contributions, which could include dispatchability, intermittency profiles, energy duration limitations, fuel supply limitations, and start-up notification limitations.[132] NYISO adds that these criteria may also influence a resource's marginal reliability contribution and will be used to develop Capacity Accreditation Factors, which will be further analyzed using ELCC techniques to understand whether there are meaningful differences in Capacity Accreditation Factors among resource classes.[133] NYISO states that, once it establishes Capacity Accreditation Resource Classes, the publicly posted class descriptions will identify what combinations of participation models, elected duration limitations, and resource characteristics fall under each Capacity Accreditation Resource Class.[134] NYISO adds that Capacity Accreditation Resource Classes and Capacity Accreditation Factors must be determined prior to the Capability Period Auction, but after the IRM model is approved in December of each year.[135]

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[130] *Id.* at 7.

[131] *Id.* at 14-15.

[132] *Id.* at 18.

[133] *Id.* at 19.

[134] As an example, NYISO explains that, if a Capacity Accreditation Resource Class is described as only applying to resources that have elected the Energy Storage Resource participation model and a 4-hour energy duration limitation, then all resources that have elected the Energy Storage Resource participation model and a 4-hour energy duration limitation would be assigned to that Capacity Accreditation Resource Class. *Id.* at 20.

[135] *Id*.

c. Responsive Pleadings

56. Several parties support NYISO's proposed marginal capacity accreditation method. Specifically, GenOn, IPPNY, the MMU, NYTOs, Ravenswood, Shell, UIU, and Vistra argue that NYISO's proposed marginal accreditation method is an equitable, fair, and cost-efficient process for determining resources' reliability contributions to the system that resolves the problems with NYISO's existing capacity accreditation system. Ravenswood, GenOn, and Shell state that NYISO's proposed marginal accreditation methodology is just and reasonable and will accurately measure each resource's reliability contribution to the system because: (1) NYISO will rely on the IRM study base case that is redeveloped annually prior to the Capability Year; (2) NYISO will calculate capacity accreditation factors for each resource class in each Locality to keep pace with the resource changes driven by the CLCPA; and (3) NYISO's methodology will ensure that capacity payments reflect each technology's relative reliability value to the system.[136]

57. Recognizing that certain NYISO stakeholders advocated for an alternative "average" ELCC accreditation approach and that the Commission recently accepted such an approach in PJM, IPPNY and NYTOs express their concerns that an average accreditation approach would not resolve the limitations of NYISO's existing accreditation framework. Specifically, IPPNY argues that average accreditation provides an inflated measure of the capacity value of additions or losses of a given resource because it is based on the average reliability value of all similar resources on the system at a given time.[137] Similarly, NYTOs argue that using an average accreditation approach can result in overstating the reliability value that a new resource brings to the system, which could lead to uneconomic development of resources that do not provide substantial reliability benefits.[138]

58. The MMU, IPPNY, State Entities, and UIU also assert that NYISO's marginal capacity accreditation proposal is more cost effective than other accreditation methods, such as the average ELCC approach. The MMU states that it analyzed the potential long-term impacts of NYISO's marginal capacity accreditation proposal, NYISO's status quo capacity accreditation rules, and an approach based on the average ELCC method, and it found that outcomes under the marginal capacity accreditation approach are most efficient.[139] Specifically, the MMU explains that it found that the marginal capacity

[136] GenOn Comments at 9; Ravenswood Comments at 11; Shell Comments at 14-15.

[137] IPPNY Comments at 12.

[138] NYTOs Comments at 7-12.

[139] MMU Comments at 12-13.

accreditation approach would save consumers approximately $176 million to $350 million per year by 2030 compared to the status quo, and save consumers approximately $93 million to $226 million per year compared to an average ELCC approach.[140] The MMU states that greater efficiency of clean energy investments to achieve CLCPA goals was a major source of the projected consumer savings under the marginal approach.

59. The MMU argues that NYISO's marginal capacity accreditation is both fair and efficient because: (1) NYISO's proposal would ensure that the loss of a unit of accredited UCAP from any two resources at the same location would have the same impact on reliability; and (2) NYISO's proposal would apply a marginal capacity accreditation to all resources, regardless of whether they are new or existing and whether they are emerging or conventional technologies.[141] Furthermore, the MMU explains that NYISO's proposal to annually reevaluate resources' capacity accreditation will appropriately assign the risk of a project's capacity value to investors who have the ability to choose between alternative projects, rather than to consumers.[142] UIU also reflects this sentiment.[143]

60. Recognizing that the Commission accepted an average ELCC approach in PJM, EPSA and IPPNY argue that the Commission allows for differences in market rules across regions and urges the Commission to "continue to respect this regional differences precedent in evaluating the NYISO filing."[144] Ravenswood agrees and cites to the Commission's prior statement that "PJM's markets are fundamentally different from NYISO's, such that what may be appropriate for PJM is not necessarily appropriate for NYISO."[145]

61. In contrast, CEAs argue that NYISO's ELCC proposal appears to result in unjust and unreasonable rates because it would assign an accredited capacity value to resources that is less than their total capacity value measured on a portfolio basis.[146] While CEAs state that they do not view this proceeding as a referendum on marginal versus average

[140] *Id.* at 13.

[141] *Id.* at 10.

[142] *Id.* at 11.

[143] UIU Comments 11-12.

[144] EPSA Comments at 5-6; *see also* IPPNY Comments at 11.

[145] Ravenswood Comments at 18 (quoting *N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022 at P 78).

[146] CEAs Protest at 64-70.

ELCC, CEAs aver that NYISO's approach appears to result in inaccurate resource adequacy determinations and inaccurate price signals. CEAs assert that capacity markets can procure resource adequacy by calculating the total value of a portfolio and allocating it across resource classes within the portfolio, or by summing up the marginal value of each resource in the order that it clears, accounting for the high value of "initial" resources and the lower value of "later" resources. CEAs contend that NYISO's approach does neither and instead credits all resources in each class based on the UCAP value of the last incremental megawatt of that class. CEAs argue that this approach will undercount a resource class's total reliability contribution because the total reliability contribution of a class is much greater than the sum of the marginal contributions of its constituent resources. CEAs state that this effect is demonstrated in NYISO's filing, which reports that the addition of 11,613 MW (ICAP) of utility-scale solar between 2024 and 2032 results in the total resource adequacy value (UCAP) of the entire utility-scale solar fleet *decreasing* by 240 MW.[147] CEAs claim that this result is "patently incorrect," and argue that it would result in substantial "missing megawatts" that would require NYISO to procure unneeded additional UCAP from redundant resources.[148]

62. Similarly, CEAs argue that NYISO's approach fails to send accurate price signals for the economically efficient quantity of each resource, and instead will systematically discriminate against resources with correlated output and with declining ELCC values in auction clearing.[149] According to CEAs, because NYISO proposes to calculate a single marginal capacity value for each resource class based on its marginal contribution to the resource mix used in the IRM study model, and use that value for all resources of that class, NYISO will undervalue the "first" megawatt of each class, sometimes dramatically, leading to incorrect auction results.

63. According to CEAs, the FPA requires that rates not be unduly discriminatory and, therefore, implies that sets of resources providing the same total reliability value should receive the same total payment.[150] In CEAs' view, this requirement raises a potential conflict between economic efficiency, which would credit resources based on their marginal value, and equal value for equal services, which would allocate total resource adequacy value to all resources contributing to that value. According to CEAs, any ELCC method must also account for the synergistic diversity benefits among resources with non-correlated output such as storage and variable resources. CEAs state that there is no single way to allocate the total capacity value of a portfolio across the constituent resources, and CEAs argue that the choice of method significantly affects the accredited

[147] *Id.* at 65 (citing Transmittal at 23).

[148] *Id.* at 65-66.

[149] *Id.* at 67-69.

[150] *Id.* at 56-63.

capacity of constituent resources. CEAs provide a taxonomy of various approaches to capacity accreditation using the ELCC method, including marginal ELCC, vintaged marginal ELCC, class average ELCC, and adjusted class average ELCC. CEAs claim that NYISO's approach departs from precedent in other Regional Transmission Organization (RTO)/ISOs, which do not use the marginal ELCC approach.[151]

64. In their answers to CEAs' protest, NYISO,[152] the MMU, UIU, and NYTOs dispute CEAs' criticisms of NYISO's marginal accreditation approach. The MMU explains that average ELCC is the only methodology that could satisfy CEAs' requirement that groups of resources with the same total ELCC receive the same total capacity payment.[153] Therefore, the MMU argues that CEAs' argument is less an argument that NYISO's approach is discriminatory than it is a preference for an alternative and much less efficient methodology.

65. NYISO, the MMU, and NYTOs contend that CEAs' assertion that NYISO's marginal capacity accreditation methodology would result in "missing megawatts" is based on a flawed understanding of the proposal. The MMU asserts that the error in CEAs' analysis stems from the fact that CEAs apply the concept of UCAP in a different way than it is applied in NYISO's market.[154] Specifically, the MMU states that CEAs incorrectly claim that the sum of accredited UCAP values of a portfolio of resources must be equal to the portfolio's total ELCC, and the MMU argues that this claim would only be true if NYISO's UCAP requirements were derived in terms of total ELCC.[155] The MMU states that UCAP does not necessarily have the same meaning in every capacity market, and the MMU clarifies that, under NYISO's proposed approach, a unit of accredited UCAP provides the same marginal reliability value as a unit of perfect capacity, whereas CEAs assume that the total quantity of accredited UCAP should equal the total quantity of perfect capacity that provides the same reliability. The MMU contends that the Commission should consider NYISO's proposal to use marginal accreditation in the context of NYISO's capacity market design and not the alternative design assumed by CEAs.[156] NYTOs and UIU concur with the MMU's position.[157]

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[151] According to CEAs, PJM presently uses an adjusted class average ELCC approach; Midcontinent Independent System Operator uses a class average approach for wind resources; and Southwest Power Pool uses a vintaged marginal approach. *Id.* at 63.

[152] NYISO states that it endorses and adopts the MMU's response to CEAs' arguments. NYISO March Answer at 23.

[153] MMU Answer at 16-17.

[154] *Id.* at 10.

[155] *Id.* at 10 (citing CEAs Protest at 64).

66. NYISO and the MMU also dispute CEAs' argument that NYISO's marginal capacity accreditation proposal would result in incorrect accounting and over-procurement of capacity.[158] Specifically, the MMU argues that marginal capacity accreditation will not result in over-procurement because the demand for UCAP would be adjusted to account for the effects of marginal accreditation and all other relevant factors.[159] Therefore, the MMU contends that utilizing a marginal accreditation approach for translating ICAP values to UCAP values will not meaningfully affect the quantity of installed capacity that is procured in a given auction or the resulting capacity prices; it will only ensure that each resource receives capacity revenues that reflect its marginal value to the system's reliability.[160]

67. NYISO and the MMU also dispute CEAs' claim[161] that NYISO's proposal would compromise reliability by reducing resources' incentives to be available.[162] The MMU argues that CEAs fail to realize that energy and ancillary service prices provide incentives for generators to be available regardless of the capacity price. Furthermore, the MMU notes that low capacity prices observed in certain NYISO zones during certain seasons have not led to widespread poor performance.[163]

68. NYISO and the MMU disagree with CEAs' claim that NYISO's marginal capacity accreditation proposal would systematically discriminate against resource types with declining marginal ELCC values by assigning a capacity value less than those resources' total ELCC.[164] The MMU agrees that NYISO's capacity market rules should be non-discriminatory and provide the same compensation to resources that provide the same value regardless of their technology, location, or age.[165] However, the MMU

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[156] *Id.* at 10-11.

[157] NYTOs Comments and Answer, Cadwalader Aff. ¶¶ 16-20; UIU Comments and Answer at 5.

[158] MMU Answer at 6-7; NYISO March Answer at 23.

[159] MMU Answer at 7.

[160] *Id.* at 8.

[161] CEAs Protest, Ex. B, Kevin Carden et al., *NYISO ELCC Accreditation Analysis: Final Report*, Astrapé Consulting, LLC (Jan. 26, 2022).

[162] MMU Answer at 11; NYISO March Answer at 24.

[163] MMU Answer at 12.

[164] *Id.*; NYISO March Answer at 23-24.

argues that marginal reliability contribution is the only appropriate standard for determining resources' relative value from both an economic and equity standpoint. The MMU states that, in competitive markets, the debate between total/average value and marginal value never arises because competitive markets always value products at their marginal value.[166]

69. Furthermore, the MMU argues that measuring capacity value at the portfolio level, as CEAs propose, rather than the individual resource level, would require the market operator to separate resources into arbitrary groups.[167] The MMU contends that these groupings would not be straightforward and argues that compensating resources based on average value rather than marginal value would benefit resource owners in larger more heterogeneous groupings, even if there is little theoretical basis for such groupings.

70. Finally, in response to CEAs' claim that assigning a total capacity payment to resources that is less than their total capacity value would be discriminatory, the MMU explains that NYISO's capacity market design already applies the principle that payments to capacity suppliers should be differentiated based on marginal value rather than total value.[168] Specifically, the MMU explains that NYISO sets marginal capacity prices for its four capacity zones using its ICAP Demand Curves; when a zone has a large amount of surplus capacity and the marginal value of capacity is low, suppliers receive low capacity payments even though the aggregate reliability benefit they provide is very high. The MMU asserts that NYISO's marginal capacity accreditation proposal would apply the same standard to distinct resource classes in the accreditation process.

71. NRDC filed comments and an answer separately from CEAs to explain that the responses filed in this proceeding have informed its position, and it now supports acceptance of NYISO's marginal capacity accreditation market design, given the unique nature of NYISO's capacity market.[169] NRDC argues that NYISO's capacity market construct is materially different from other RTO/ISO capacity markets because NYISO: (1) is a single-state ISO; (2) is wholly located in a state with comprehensive and

[165] MMU Answer at 13.

[166] For example, the MMU explains that the value of an additional deli in New York City is clearly contingent on the other delis that already exist and argues that it would be misguided for one to estimate the value of one deli by estimating the lost value of closing every deli in New York City and dividing by the total number of delis (which is a total/average valuation). *Id.*

[167] *Id.* at 14.

[168] *Id.* at 14-15.

[169] NRDC Comments and Answer at 2.

ambitious climate and clean energy policies that are driving an unprecedented transition of the resource mix; and (3) has a unique prompt capacity market design.[170] NRDC asserts that these attributes make marginal accreditation acceptable in NYISO.

72. In contrast, the American Clean Power Association (ACP) and other parties that signed onto CEAs' protest (collectively, ACP et al.)[171] maintain their position that NYISO's marginal capacity accreditation market design is unjust and unreasonable for the reasons explained in their initial comments.[172]

73. Furthermore, while they maintain their support for NYISO's filing, the MMU, State Entities, NRDC, IPPNY, and NYTOs explain that NYISO inadvertently failed to make a tariff revision that is necessary for NYISO's UCAP requirement formulas to be consistent with its description of the formulas in its filing.[173] Specifically, they explain that NYISO failed to replace "Adjusted ICAP" with "ICAP," given the instant filing's revised definition of the term Adjusted ICAP. NRDC argues that this material defect would cause "dramatic over-procurement" by artificially inflating NYISO's UCAP requirement if it is not corrected.[174] Accordingly, NRDC, State Entities, and IPPNY request that the Commission condition acceptance of the proposal on NYISO correcting the error on compliance.

74. In its April Answer, NYISO states that it would be appropriate to replace "Adjusted [ICAP]" starting with the Capability Year that begins May 1, 2024.[175] Specifically, NYISO states that the ICAP to UCAP calculation for translating the NYCA ICAP requirement under section 5.10 of the Services Tariff, and for translating Locality UCAP requirements under section 5.11 of the Services Tariff, should use "total ICAP" instead of "Adjusted ICAP." NYISO states that it would have no objection to making this minor clarification in a compliance filing.[176]

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[170] *Id.* at 3.

[171] ACP et al. includes ACP; Sierra Club; Borrego Solar, Inc.; Enel North America, Inc.; Cypress Creek Renewables; Centrica Business Solutions; and Voltus, Inc.

[172] ACP et al. Comments and Answer at 8.

[173] MMU Answer at 8 n.14; NYTOs Comments and Answer, Cadwalader Aff. ¶ 15 n.7; State Entities Deficiency Letter Comments at 7-8; NRDC Comments and Answer at 7-12; IPPNY Answer at 2.

[174] NRDC Comments and Answer at 8.

[175] NYISO April Answer at 5-6.

[176] *Id.* at 6.

d. Determination

75. As noted above, we find that NYISO's proposed marginal capacity accreditation methodology is just and reasonable and not unduly discriminatory or preferential. NYISO has demonstrated that it will objectively measure each resource's reliability contribution to the NYISO system pursuant to the proposal. Specifically, we find that NYISO's proposal will result in NYISO: (1) deriving resources' Capacity Accreditation Factors based on the NYSRC's resource adequacy model, which accurately represents NYISO's system for each Capability Year; (2) calculating Capacity Accreditation Factors for each resource class annually and incorporating existing locational components of NYISO's ICAP Market, ensuring that Capacity Accreditation Factors reflect changes to NYISO's resource mix over time; and (3) accrediting all resources on a non-discriminatory basis in proportion to their marginal contribution to meeting the NYSRC's resource adequacy requirements.

76. CEAs argue that NYISO's proposed methodology would unjustly and unreasonably define UCAP in a way that results in the resource portfolio being assigned a *total* UCAP that is less than its *total* equivalent "perfect capacity." In contrast, NYISO, the MMU, and other supporters of NYISO's proposal argue that it is appropriate to define a resource' s UCAP such that each resource is assigned a UCAP value based on how its *marginal* contribution to resource adequacy compares to the *marginal* contribution of "perfect capacity." We agree that it is just and reasonable and not unduly discriminatory or preferential to accredit a resource's capacity value (i.e., its UCAP) based on its marginal reliability contribution because this value represents the resource's incremental reliability contribution to the NYISO system as it exists, including the presence of other resources that affect the subject resource's capacity value.[177] We are not persuaded by CEAs' argument that NYISO must consider the "initial" capacity value of resources relative to a hypothetical system where some or all of the subject resource class is removed from the system particularly in light of the timing of NYISO Spot Market Auctions, which occur monthly and are not likely to have large month-to-month variations in resources.

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[177] We note that, while the Commission accepted an average ELCC approach in PJM, it did so without prejudice to PJM proposing a marginal ELCC approach in the future. PJM ELCC II, 176 FERC ¶ 61,056 at P 39. Further, the Commission explicitly noted that the fact that a marginal ELCC approach may be just and reasonable does not render the average approach unjust and unreasonable. *Id.* P 37 (citing *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) ("FERC is not required to choose the best solution, only a reasonable one."); *Wis. Pub. Power*, 493 F.3d at 266 ("Merely because petitioners can conceive of a refund allocation method that they believe would be superior to the one FERC approved does not mean that FERC erred in concluding the latter was just and reasonable. Again, reasonableness is a zone, not a pinpoint.")).

77. We agree with NYISO and the MMU that NYISO's proposal would not undercount capacity, lead to "missing megawatts," or require that NYISO procure unneeded UCAP to cover any "missing megawatts." As NYISO and the MMU explain, NYISO's capacity market design converts NYISO's ICAP requirement (i.e., the NYISO system's demand for capacity) into UCAP terms using the same ICAP to UCAP conversion factors that NYISO applies to resource capacity supply offers.[178] Therefore, there is no disconnect between NYISO's demand for UCAP and the UCAP that resources would be eligible to supply in the capacity market under NYISO's proposal. Although CEAs point to the fact that NYISO's filing finds that the addition of 11,613 MW nameplate of utility-scale solar between 2026 and 2032 would cause the total UCAP of the solar fleet to decrease by 240 MW, CEAs fail to acknowledge that NYISO's summer UCAP requirement would increase by only 1,449 MW despite the fact that its summer peak load would increase by 3,707 MW over the same period.[179] Furthermore, NYISO's winter UCAP requirement would increase by only 1,933 MW despite the fact that its winter peak load would increase by 7,108 MW. The "missing megawatts," as CEAs call them, are not missing at all. Instead, those megawatts are accounted for through a UCAP requirement that is lower than what the requirement would be if NYISO determined its UCAP requirement in terms of the total "perfect capacity" needed to "carry" an additional 3,707 MW of summer peak load and 7,108 MW of winter peak load. Therefore, we find that NYISO's proposal would not unreasonably undercount capacity value.

78. We also agree with supporters of NYISO's proposal that the nature of NYISO's Spot Market Auction mitigates concerns that the resource fleet used to calculate Capacity Accreditation Factors would not closely resemble the resource fleet that clears the Spot Market Auction. As NYISO explains in its Deficiency Letter Response, the resources considered in the NYSRC's resource adequacy model almost exactly align with the resources that receive capacity supply obligations. Furthermore, NYISO and the MMU attest that the vast majority of resources offer into the Spot Market Auction at $0/kW-month (i.e., as price takers) because there is little incentive for resources to submit price sensitive offers into a Spot Market Auction. Therefore, there is little to no risk that NYISO's proposal would cause a disconnect between the resource fleet assumed by the NYSRC and the resource fleet that clears the auction.

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[178] As discussed below, our finding here is contingent on NYISO replacing its inadvertent continued use of "Adjusted Installed Capacity" in the formulas for its UCAP requirements with "Installed Capacity." *See infra* P 82.

[179] Transmittal, attach. III-A at 18 (citing Itron, *New York ISO Climate Change Impact Study, Phase 1: Long-Term Load Impact*, at app. A-4 (Dec. 2019), https://www.nyiso.com/documents/20142/10773574/NYISO-Climate-Impact-Study-Phase1-Report.pdf).

79. We disagree with CEAs' claim that NYISO's proposal would "systematically discriminate" against resources with correlated output profiles because their marginal capacity values decline with increasing penetration. Resources with correlated output profiles add declining resource adequacy value to the system as their penetration increases, and this is a real and measurable reliability consequence of their correlated output. For example, a resource that can only generate energy during certain hours of the day only provides a resource adequacy benefit to the extent that there is a risk of unserved load during those hours. If the system has a large penetration of resources with correlated output such that there is little or no risk of unserved energy at times when those resources are generating, it is reasonable to assign commensurately lower capacity accreditation to those resources. As NYISO's marginal capacity accreditation framework will apply to *all* resources, including conventional thermal resources, any difference in outcome between resources would be a product of their physical and operational characteristics and thus expected ability to meet the system's reliability needs, and would not reflect undue preference or discrimination.

80. We also disagree with CEAs' claim that it is unduly discriminatory to award a total capacity payment to a portfolio of resources that is less than the total volume (i.e., as a portfolio) of reliability they provide. This outcome is consistent with capacity market designs the Commission has accepted in NYISO and other RTOs/ISOs.[180] We also agree with NYISO, the MMU, and others that, given the nature of NYISO's ICAP Auctions, NYISO's proposed marginal capacity accreditation approach will send a more accurate investment signal to market participants about the reliability value of various resource types in each Capability Year as compared to the average accreditation approach CEAs prefer. This signal will guide more efficient entry decisions as it will help investors understand the reliability impacts of adding incremental capacity to the NYISO system.

81. Finally, we agree with NYISO and the MMU that NYISO's proposed marginal capacity accreditation method would not risk reliability by failing to incentivize resource performance because NYISO's operating reserve demand curves[181] will send a strong signal for resources to perform during shortage conditions regardless of their capacity

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[180] *See*, *e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 103 FERC ¶ 61,201, at P 16 (2003) ("We also agree with NYISO that successive incremental resource additions above 118 percent provide declining incremental reliability value, and that it is reasonable for the price of ICAP to reflect this relationship.").

[181] An operating reserve demand curve has the effect of raising prices in a previously agreed-upon way as operating reserves grow short. *See Wholesale Competition in Regions with Org. Elec. Mkts.*, Order No. 719, 125 FERC ¶ 61,071, at P 208 (2008), *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009); *see also* NYISO, NYISO Tariffs, NYISO MST, 2.15 MST Definitions - O (16.0.0).

payment. As the MMU explains, winter capacity prices in NYISO are often much lower than summer prices, yet these prices have not led to widespread poor performance because the energy and ancillary services markets incentivize resources to be available during critical hours.[182]

82. Our findings above, however, are contingent on NYISO replacing its inadvertent continued use of "Adjusted Installed Capacity" in the formulas for its UCAP requirements with "Installed Capacity," as NYISO describes in its April Answer.[183] NYISO's proposed tariff revisions significantly revise the definition of Adjusted ICAP in a way that could result in significant unintended consequences due to the continued usage of Adjusted ICAP in the UCAP requirement formulas. Parties in this proceeding widely acknowledge that NYISO's failure to revise this term in its UCAP requirement formulas was an inadvertent oversight and NYISO explicitly consents to the Commission directing it to correct the oversight in a compliance filing.[184] Therefore, we direct NYISO to submit a compliance filing within 30 days of the issuance date of this order revising sections 5.10 and 5.11 of its Services Tariff to replace the use of "Adjusted Installed Capacity" in its UCAP requirement formulas with "Installed Capacity."

3. Tariff vs. Non-Tariff Components of NYISO's Proposal

a. Filing

83. NYISO explains that its proposal for effectuating the proposed marginal capacity accreditation design is broken into three phases.[185] "Phase 1" includes the Commission's acceptance of the proposed Services Tariff revisions in the instant filing. "Phase 2" involves the development of non-tariff implementation details and related procedures pertaining to the marginal capacity accreditation design. And "Phase 3" involves the completion of the first capacity accreditation review called for in the proposed tariff revisions.

84. NYISO argues that the implementation details and technical specifications that stakeholders will develop in Phase 2 are properly left to NYISO's manuals and other ISO procedures, consistent with the Commission's rule of reason policy.[186] According to

[182] MMU Answer at 12.

[183] NYISO April Answer at 5-6.

[184] *Id.* The D.C. Circuit has held that, in certain circumstances, the Commission has "authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications*." *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

[185] Transmittal at 43-44.

NYISO, as has been done with other significant market design changes, NYISO will describe the core principles, purpose, and key features of marginal capacity accreditation approach in its Services Tariff, while the detailed procedures and implementing software will be developed during Phase 2 after the Commission accepts the proposed tariff revisions.[187] NYISO states that the Commission has held that RTOs/ISOs should be allowed to include such implementation details in their manuals and procedures "in light of the multitude of occasions in tariff administration that require the exercise of technical or operational expertise."[188] NYISO further explains that the Commission understands that "study assumptions and parameters are likely to change over time" in complex RTO/ISO managed processes and therefore having "rigid specifications or formulas" in the tariff would be problematic.[189]

b. Deficiency Letter Response

85. In its deficiency letter, Commission staff requested additional information regarding the definition of "marginal reliability contribution," the differences between the ELCC and MRI techniques, and why NYISO proposed to specify certain aspects of its marginal capacity accreditation methodology in its manuals rather than its Services Tariff.[190]

86. In its Deficiency Letter Response, NYISO defines marginal reliability contribution as "the measurement of the resource adequacy value of an incremental resource addition to (or removal from) a system, in this case the [NYCA] bulk transmission system."[191] NYISO also explains that, while it has not decided whether it will use an ELCC method or the MMU's proposed MRI method to calculate resource classes' marginal reliability contributions, the two methods are simply different techniques to calculate the same value. NYISO states that it is considering using the MRI technique due to its superior computational efficiency compared to the ELCC method and clarifies that it will only

[186] *Id.* at 4, 43-44 & n.132 (quoting *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985); *Hecate Energy Greene Cnty. 3 LLC v. N.Y. Indep. Sys. Operator, Inc.*, 177 FERC ¶ 61,121, at P 46 (2021)).

[187] *Id.* at 4-5 (citing *Astoria Generating Co., L.P. v. N.Y. Indep. Sys, Operator, Inc.*, 139 FERC ¶ 61,244, at P 50 (2012); *Cal. Indep. Sys. Operator*, 156 FERC ¶ 61,152, at P 15 (2016) (letter order)).

[188] *Id.* at 5 n.9 (quoting *ISO New Eng. Inc.*, 137 FERC ¶ 61,112, at P 19 (2011)).

[189] *Id.* (quoting *Sw. Power Pool, Inc.*, 136 FERC ¶ 61,050, at P 37 (2011)).

[190] Deficiency Letter at 3-4, 5.

[191] Deficiency Letter Response at 2.

consider adopting the MRI technique if that technique is shown to produce consistently comparable results to the ELCC technique.

87. NYISO explains that it proposed to address the concept of marginal reliability contribution in its manuals rather than in its Service Tariff because both the stakeholder process and the record in this proceeding demonstrate that the marginal reliability contribution concept is well understood.[192] According to NYISO, marginal valuation concepts in general are universally understood because they are the basis of all competitive markets, including Commission-jurisdictional capacity markets.[193] NYISO also argues that parties to this proceeding who assert that the marginal reliability contribution concept should be detailed in the Services Tariff demonstrate a clear understanding of the concept.[194]

88. NYISO explains that it would define Capacity Accreditation Resource Classes in its manuals by evaluating the criteria that are expected to impact a resource's marginal reliability contribution.[195] NYISO states that it would publicly post the final Capacity Accreditation Resource Classes and clearly identify which class each resource belongs to at least two weeks prior to the start of the summer Capability Period auction that occurs in April each year, consistent with its current practice for derating factors. NYISO further states that resource owners would be able to appeal their class assignment through existing ICAP manual procedures, which allow resource owners to raise any concerns related to their class assignment prior to the auction.

89. NYISO further argues that the detail it proposes to include in the Services Tariff is consistent with Commission precedent on the rule of reason. NYISO contends that, when applying the rule of reason, the Commission balances the benefits of notice and full disclosure against the potential burden if terms that do not substantially affect rates and services must be filed.[196] According to NYISO, the Commission has repeatedly emphasized, particularly in the context of RTOs/ISOs managing complex processes, that it is inappropriate to deprive utilities of flexibility to manage their operations. Further, NYISO argues that Commission precedent does not require every detail to be included in the Services Tariff, particularly those that an RTO/ISO may need to change frequently,[197]

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[192] *Id*.

[193] *Id.* at 2-3 (citing MMU Answer at 13).

[194] *Id.* at 3 (citing MMU Answer at 6)

[195] *Id.* at 19.

[196] *Id.* at 10-11 (quoting *ISO New Eng., Inc.*, 154 FERC ¶ 61,008, at P 32 (2016) (ISO-NE ICR Order)).

such as study assumptions and parameters that are likely to change over time with experience.[198] Rather, NYISO argues that what matters is that tariffs contain enough specificity to give reasonable notice of the core features of the rules and procedures they establish.

90. NYISO asserts that the level of detail reflected in the proposed tariff revisions in the instant filing is consistent with Commission orders in NYISO,[199] PJM,[200] and ISO-NE.[201] Specifically, NYISO explains that in the NYISO Alternative LCR Order, NYISO proposed tariff revisions stating that LCRs would be calculated in accordance with the NYISO business practice manuals, while following a set of higher-level parameters set forth in the tariff.[202] There, the Commission found that the proposed provisions satisfied the rule of reason.[203] Next, NYISO points to the PJM Forward-Looking Offset Order, in which PJM proposed tariff language that described generally how PJM would calculate the offset,[204] but did not identify the relevant trading hubs or provide other details about the hubs. NYISO explains that in that case, the Commission rejected arguments that details relating to the hubs must be included in the tariff and found that it was reasonable to leave those details in manuals because they may change over time. Finally, NYISO discusses the ISO-NE ICR Order.[205] NYISO explains that in

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[197] *Id.* at 11 (quoting *Cal. Ind. Sys. Operator, Inc.*, 123 FERC ¶ 61,283, at P 85 (2008)).

[198] *Id.* (quoting *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,084, at P 65 (2021) (PJM ELCC I)).

[199] *Id.* at 11-12 (citing *N.Y. Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,011, at P 53 (2018) (NYISO Alternative LCR Order) (revising methodology to use an economic optimization algorithm to determine the optimal LCR level for each locality)).

[200] *Id.* at 12 (citing *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 (2020) (PJM Forward-Looking Offset Order) (modifying the calculation of the energy and ancillary services revenue offset to be used in the PJM Reliability Pricing Model capacity market)).

[201] *Id.* at 13-14 (citing ISO-NE ICR Order, 154 FERC ¶ 61,008).

[202] *Id.* at 11.

[203] *Id.* at 12.

[204] "[T]he offset would be calculated by estimating 'forward-looking electricity and fuel prices at liquid trading hubs for the subject delivery year.'" *Id.* (quoting PJM Forward-Looking Offset Order, 173 FERC ¶ 61,134 at P 89).

ISO-NE, the tariff contained general language that required ISO-NE to calculate annually an Installed Capacity Requirement (ICR) but did not detail how to calculate that ICR.[206] NYISO further explains that, subsequently, ISO-NE developed a more detailed methodology that it did not file with the Commission. According to NYISO, in the ISO-NE ICR Order, the Commission rejected arguments that ISO-NE should have filed the new methodology with the Commission in advance of its use.[207] NYISO states that the Commission explained that "it had 'not previously required tariff revisions under section 205 each time ISO-NE revised the methodology used to calculate the ICR, and the existing tariff provisions recognized that those revisions may require ISO-NE to have sufficient flexibility to update its assumptions as necessary.'"[208] According to NYISO, its proposed revisions are similar to the tariff provisions at issue in these cases.

c. Responsive Pleadings

91. Other than to address the inadvertent error discussed above,[209] City of New York, EPSA, GenOn, IPPNY, the MMU, NYTOs, Shell, State Entities, UIU, and Vistra request that the Commission accept NYISO's proposed tariff revisions without modification.[210]

92. In contrast, CEAs, Equinor, and PEAK Coalition argue that the Commission cannot accept NYISO's capacity accreditation design as filed because it fails to comply with both the filed rate doctrine and the rule of reason.[211] More specifically, CEAs assert that capacity accreditation methodologies are too complex to be described in a term as simple as "marginal reliability contribution."[212] CEAs claim that NYISO has failed to

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[205] *Id.* at 13.

[206] *Id.*

[207] Specifically, protestors challenged the incorporation of forecasts of the effects of distributed solar generators on load requirements into the calculation. *Id.*

[208] *Id.* (quoting ISO-NE ICR Order, 154 FERC ¶ 61,008 at P 31).

[209] *See supra* P 73.

[210] City of New York Comments at 1-2; EPSA Comments at 2; GenOn Comments at 4; IPPNY Comments at 1-2; MMU Comments at 1; NYTOs Comments at 2; Shell Comments at 3; State Entities Comments at 18; UIU Comments at 3; Vistra Comments at 1.

[211] CEAs Protest at 53; Equinor Comments at 5-7; PEAK Coalition Comments at 3-4.

[212] CEAs Protest at 56-63

specify how it would determine resources' marginal reliability contributions, pointing to NYISO's statement that it has yet to determine whether it will use ELCC or another equivalent methodology such as the MRI technique recommended by the MMU.[213] CEAs state that NYISO has failed to demonstrate that the two methodologies are in fact equivalent, and argues that there is considerable variation within marginal ELCC methodologies. Further, CEAs argue that the proposed tariff does not clearly state whether NYISO is required to use the same methodology for different resource classes. PEAK Coalition states that its primary concern is the lack of details in the marginal accreditation proposal regarding the impacts of a marginal approach on environmental justice communities in NYISO Zone J.[214] PEAK Coalition states that, absent that detail, its members are unable to determine the impact of the proposal on future renewable energy and storage resources needed in Zone J to ensure a just and equitable energy transition.

93. CEAs, invoking the Commission's rule of reason, urge the Commission to require that NYISO file in its Services Tariff the additional implementation details and technical specifications that it intends to develop in Phase 2.[215] CEAs state that, without this future obligation, NYISO's stakeholder process will fail to be transparent and collaborative. CEAs further assert that relevant judicial precedent makes clear that the methods used to translate between ICAP and UCAP must be in the Services Tariff.[216] Similarly, Equinor argues that there is no basis for finding that these aspects of NYISO's proposed methodology are not readily susceptible to specification and that there is no justification for NYISO's failure to provide a level of detail comparable to the level and transparency provided by other RTOs/ISOs in their tariffs.[217]

94. CEAs contend that Commission precedent does not support NYISO's effort to dodge the rule of reason.[218] CEAs argue that, while the Commission has found that "not all of the details of a methodology must be delineated in a tariff," this does not mean that none of the details must be delineated.[219] CEAs in particular rely on *Keyspan-Ravenswood*,[220] in which they state that the court held that the Commission erred in

[213] *Id.* at 55.

[214] PEAK Coalition Comments at 1.

[215] CEAs Protest at 77.

[216] *Id.* at 73 (citing *Keyspan-Ravenswood*, 474 F.3d 804 (D.C. Cir. 2007)).

[217] Equinor Comments at 7.

[218] CEAs Protest at 75.

[219] *Id.* at 76 (citing *Astoria*, 139 FERC ¶ 61,244 at P 44).

finding that "NYISO had no need to file its method for translating installed capacity into unforced capacity because requiring such detail in a filing goes beyond the 'rule of reason.'"[221] According to CEAs, the court in *Keyspan-Ravenswood* concluded that NYISO's own evidence demonstrated that the method for making this conversion significantly affected the region's compliance with its reliability rules. CEAs argue that, in the instant filing, NYISO proposes a similarly vague principle for translating between ICAP and UCAP that even NYISO concedes is just the beginning of a two-year design process.[222] CEAs conclude that *Keyspan-Ravenswood* requires that the method for converting ICAP to UCAP must be described in Commission-approved tariffs in sufficient detail to be understood by consumers and market participants, rather than in NYISO's manuals.[223]

95. Further, CEAs note that NYISO's proposal offers few specific commitments on how resources will be split into Capacity Accreditation Resource Classes.[224] CEAs argue that, under many capacity accreditation methods, a resource's class assignments can have a major impact on its capacity value allocation, and therefore NYISO must provide much greater detail and predictability regarding class assignment before the Commission can determine whether its proposed method is just and reasonable.[225]

96. In their answers, NYISO, the MMU, IPPNY, and EPSA argue that there is no need to explicitly define marginal reliability contribution in the tariff or elaborate rules for calculating it under the rule of reason because the core concept is broadly understood.[226] NYISO asserts that its proposed tariff revisions contain a level of detail that is consistent with Commission precedent that accepts the use of a clear but high-level description of the methodology that will govern a complex process, while leaving the implementation details to manuals or other documents.[227] NYISO contends that the mathematical details

[220] 474 F.3d 804.

[221] CEAs Protest at 73 (quoting *Keyspan-Ravenswood*, 474 F.3d at 811).

[222] *Id.* at 73-74.

[223] *Id.* at 74.

[224] *Id.* at 55-56.

[225] *Id.* at 56 (quoting PJM ELCC I, 175 FERC ¶ 61,084 at P 66 (finding that "the ELCC Classes should be specified" in the Reliability Assurance Agreement")).

[226] NYISO March Answer at 18; IPPNY and EPSA Comments and Answer at 18; MMU Answer at 4-5.

[227] NYISO March Answer at 13.

of the ELCC and MRI techniques are comparably technical and therefore do not belong in the Services Tariff. Further, NYISO points out that the two approaches involve different calculation methods but "should produce similar or the same results regardless of the technique or methodology used."[228] The MMU, IPPNY, and EPSA concur that MRI and ELCC are simply alternative techniques to quantify the same marginal contribution to system reliability, and assert that the techniques are properly left to the manuals under the rule of reason.[229] Further, the MMU, IPPNY, and EPSA assert that the economic concept of marginal value is well known and note that there is existing literature on how marginal capacity accreditation differs from other accreditation approaches, including studies included in CEAs' protest.[230]

97. NYISO adds that CEAs' own filing and the statements of its experts belie CEAs' assertion that NYISO's proposed marginal accreditation design is not adequately described or comprehensible.[231] NYISO cites CEAs' comments, which include clear descriptions of the "marginal," "vintaged marginal," "class average," and "adjusted class average" approaches to ELCC capacity accreditation. NYISO notes further that CEAs' filing includes a table taken from a presentation to NYISO stakeholders describing the relative advantage and disadvantages of "vintaged marginal," "marginal," and "adjusted class average" approaches.

98. Furthermore, NYISO argues that *Keyspan-Ravenswood* is distinguishable from the circumstances here, and therefore, that CEAs' reliance thereon is misplaced. According to NYISO, *Keyspan-Ravenswood* related to two issues: (1) the tariff's silence as to the ICAP to UCAP conversion methodology for LSEs—the tariff simply stated the process would "be performed in accordance with ISO procedures;" and (2) the resulting use of differing conversion methodologies for suppliers and LSEs, which had the effect of driving the IRM below the minimum required level.[232] According to NYISO, the court's primary concern was the second issue, i.e., the reduction in the IRM, and NYISO argues that the instant filing presents no such problem. Further, NYISO states that the proposed tariff provisions are distinguishable from the tariff revisions at issue in *Keyspan-Ravenswood* because they accurately describe how NYISO will administer the marginal capacity accreditation approach, in contrast to the "unelaborated reference to 'ISO

[228] *Id.* (quoting Deficiency Letter Response at 6).

[229] MMU Answer at 4; IPPNY and EPSA Comments and Answer at 20.

[230] MMU Answer at 4 (citing CEAs Protest, Exs. B, C); IPPNY and EPSA Comments and Answer at 18; *see also* UIU Comments and Answer at 9 (agreeing that ELCC is a well-understood approach).

[231] NYISO March Answer at 17.

[232] *Id.* at 14-15 (quoting *Keyspan-Ravenswood*, 474 F.3d at 807).

Procedures'" that the court found violated the rate filing requirement of FPA section 205(c) in *Keyspan-Ravenswood*.[233]

99. NYISO refutes CEAs' reliance on the Commission's statement in PJM ELCC I that PJM should include defined ELCC classes in its tariff.[234] NYISO states that the Commission's statement was not a directive but rather guidance in an order rejecting PJM's original ELCC proposal on other grounds. Additionally, NYISO contends that the guidance was specific to PJM and that, while PJM voluntarily followed the guidance, such dicta is not a determination binding on NYISO. NYISO distinguishes its proposed capacity accreditation approach from the approach used in PJM by explaining that PJM's ELCC resources comprise a small percentage of installed capacity in PJM, while NYISO's marginal capacity accreditation approach would apply to all capacity resources. NYISO further distinguishes how it would develop its resource classes. NYISO explains that the Capacity Accreditation Resource Classes would be established in accordance with the proposed tariff definition, based on a review of technologies, operating characteristics, and locations on the system in order to categorize resources with similar reliability contributions in the same class, and NYISO would not use the kind of administrative rules that are part of PJM's process and that proved to be susceptible to specification. Accordingly, NYISO argues that having more detailed class definition rules is both more practicable and more necessary under PJM's class average ELCC methodology than under NYISO's proposed marginal methodology.

100. IPPNY and EPSA agree with NYISO that it is critical that the tariff language is not overly prescriptive, so that NYISO can have flexibility to adjust marginal reliability contribution calculations for each Capacity Accreditation Resource Class annually in a manner that reflects changes in the nature and operating characteristics of the supply mix since the previous year's assessment.[235] IPPNY and EPSA note that CEAs ignore core components of NYISO's filing and NYISO's rationale for the annual review of the Capacity Accreditation Resource Classes.[236] According to IPPNY and EPSA, considering New York's renewable targets outlined in the CLCPA, an annual review will efficiently support the fast-paced evolution of the system, and this circumstance embodies the very situations noted in previous Commission decisions where "rigid specifications or formulas set out in the Tariff would likely lead to less reliable assessments due to the inability of planners to adapt to changing circumstances," and thus, under such circumstances, those technical details are reasonably left to RTO manuals.[237]

[233] *Id.* at 15 (quoting *Keyspan-Ravenswood*, 474 F.3d at 810).

[234] *Id.* at 19-20.

[235] IPPNY and EPSA Comments and Answer at 21.

[236] *Id.* at 23.

101. In their answers, ACP et al. and Equinor argue that NYISO's attempt to distinguish the circumstances in NYISO from those in PJM is unavailing because it ignores the Commission's rationale that a resource's class directly affects rates and therefore must be defined in the tariff.[238] ACP et al. argue that by applying the marginal capacity accreditation approach to all resources, NYISO amplifies the significance of resource class definitions on rates, further underscoring the need to define these classes in the Services Tariff. ACP et al. further argue that nothing in the Commission's finding in PJM's ELCC proceeding suggests that its applications are unique to PJM's methodology.[239]

102. ACP et al. argue that NYISO's approach to marginal capacity accreditation for thermal resources is not yet known and that marginal accreditation is not well understood for thermal resources as there is no precedent or "common industry practice" to indicate how it could be applied to thermal resources.[240] According to ACP et al., developing a first-ever approach to ELCC for thermal resources will involve decisions that significantly affect rates and therefore need to be in the tariff.[241] ACP et al. further contend that, with all of the characteristics that NYISO enumerates that could affect marginal reliability contribution, decisions will need to be made to arrive at a workable set of resources classes. ACP et al. argue those decisions will significantly affect the capacity value of different resources.

103. While they maintain their support for NYISO's filing, State Entities, IPPNY and EPSA, and NRDC request that the Commission direct NYISO to submit informational filings to provide updates regarding its "Phase 2" stakeholder process. Specifically, IPPNY and EPSA suggest that the informational filing could report on NYISO's progress toward adopting implementation details, the results of the studies NYISO will be conducting later this year, and NYISO's ultimate implementation of its marginal capacity accreditation methodology once such details are incorporated in the ISO Procedures.[242] Similarly, NRDC recommends that the Commission direct NYISO to summarize relevant resource adequacy activities and/or changes made at the NYSRC, document the total load carrying capacity and marginal UCAP of each resource class when it updates the resource accreditation each year, and report on differences between the resource mix assumed in

[237] *Id.* at 23-24 (quoting PJM Forward-Looking Offset Order, 173 FERC ¶ 61,134 at P 159).

[238] ACP et al. Comments and Answer at 7; Equinor Comments and Answer at 4.

[239] ACP et al. Comments and Answer at 7.

[240] *Id.* at 3-4.

[241] *Id.* at 4.

[242] IPPNY and EPSA Comments and Answer at 22.

the ICAP requirement and marginal UCAP values and the actual cleared mix.[243] State Entities request that the Commission direct NYISO to report on the outcome of its Phase 2 stakeholder process to ensure that the implementation details meet the requirements of FPA section 205.[244] According to State Entities, this filing should incorporate the details and procedures developed during Phase 2 in NYISO's Services Tariff rather than NYISO manuals and ISO Procedures.[245]

104. NYISO states that it does not support NRDC's recommendation that the Commission require it to submit informational reports on the status and progress of the Phase 2 stakeholder process, arguing that such reports would not increase transparency and would not be an effective use of NYISO's limited resources.[246] NYISO also maintains that its proposed revisions contain more than enough detail to comply with the requirements of FPA section 205 and the Commission's rule of reason.[247] However, NYISO states that it would consent to including additional language in the tariff to go beyond the minimum requirements of the rule of reason, and requests that the Commission "leave it to the NYISO to propose additional tariff language in a compliance filing to be made at the end of" Phase 2.[248] NYISO states that it would be in a position to make such a compliance filing within 90 days from the completion of Phase 2.

d. Determination

105. We find that NYISO's proposed tariff revisions contain sufficient detail to demonstrate that NYISO's proposed marginal capacity accreditation approach is just and reasonable and not unduly discriminatory or preferential. However, as explained below, we direct NYISO to submit an informational filing upon completion of its "Phase 2" stakeholder process reporting on the final implementation details. We accordingly reject arguments that NYISO improperly omits material elements regarding the proposed marginal capacity accreditation approach that ought to be included in the Services Tariff rather than in NYISO's business practice manuals.

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[243] NRDC Comments and Answer at 13.

[244] State Entities Deficiency Letter Comments at 3-4; *see also* NRDC Comments and Answer at 12-13.

[245] State Entities Deficiency Letter Comments at 3-4.

[246] NYISO April Answer at 6.

[247] *Id.* at 7.

[248] *Id.* at 8-9.

106. Decisions regarding whether an item should be placed in an RTO/ISO tariff or in a business practice manual are guided by the rule of reason, under which provisions that "significantly affect rates, terms, and conditions" of service, are readily susceptible of specification, and are not generally understood in a contractual agreement must be included in the tariff, while items better classified as implementation details may be included in the business practice manual.[249] The rule of reason recognizes that there are an "infinitude of practices affecting rates and services"[250] and courts have recognized the Commission's broad discretion to allow utilities to forego filing particular contracts or practices.[251]

107. As the court explained in *City of Cleveland*, a broad requirement that most or even many of utilities' terms of service must be memorialized in the tariff could effectively stymie the Commission's ability to render timely decisions: "If FERC could approve no final language without evidentiary hearings on the particular text, ratemaking proceedings would stretch on interminably—the hearings on one text leading to a revision which would in turn have to be the subject of evidentiary hearings."[252] The court also considered whether parties challenging a particular proposal have had adequate procedural opportunities to do so: "[N]otice is sufficient if the description of the 'subjects and issues involved' affords interested parties a reasonable opportunity to participate . . . ."[253]

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[249] *Energy Storage Ass'n v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296, at P 103 (2018); *see also City of Cleveland*, 773 F.2d at 1376-77 (affirming the Commission's decision not to include term in tariff explaining that "only those practices that affect rates and service *significantly*, that are reasonably *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous" must be included in a tariff).

[250] *City of Cleveland*, 773 F.2d at 1376.

[251] *PacifiCorp*, 127 FERC ¶ 61,144, at P 9 n.14 (2009) (citing *Pub. Serv. Co. of Colo.*, 67 FERC ¶ 61,371, at 62,267 (1994)); *see also City of Cleveland*, 773 F.2d at 1376 (explaining that courts give the Commission "broad bounds of discretion [] to give concrete application to this amorphous directive"); *Town of Easton v. Delmarva Power & Light Co.*, 24 FERC ¶ 61,251, 61,531 (1983) ("[A]s we have stated on several occasions 'the determination of what agreements "affect or relate to" electric service within the purview of section 35.2(b) must be judged by the rule of reason.'") (quoting *Pac. Gas & Elec. Co.*, 7 FERC ¶ 61,267, at 61,565 (1979), *aff'd sub nom.*, *Pac. Gas & Elec. Co. v. FERC.*, 679 F.2d 262 (D.C. Cir. 1982)).

[252] *City of Cleveland*, 773 F.2d at 1373.

[253] *Id.*

108. Applying the rule of reason to the specifics of NYISO's instant filing, we believe that we are comfortably within our discretion to accept NYISO's proposal in its current form, and without requiring further detail in the tariff. In our view, the court's guidance in *City of Cleveland*, rendered with regard to a bilateral dispute between a utility and its customer about short-term electric service, rings even more true in the context of a dispute between diverse stakeholders, involving complex measurement and reliability methodologies. We find that, consistent with the foregoing principles, NYISO's Services Tariff provides sufficient detail to define "marginal reliability contribution," and in addition sets forth the process for calculating the marginal capacity accreditation.

109. First, we find that all parties in this proceeding, including CEAs, understand that "marginal reliability contribution" refers to a measure of resources' capacity value consistent with the generally understood ELCC approach, as reflected by the plethora of studies and discussion about the various possible impacts and techniques that could be used in implementing the marginal accreditation design.[254] Further, as NYISO and the MMU explain, the ELCC and MRI techniques are simply different techniques to measure the same value – the marginal reliability contribution of a given resource class.[255] We also note that NYISO has committed to use the computationally simpler MRI technique only if it produces results consistent with the ELCC technique.[256] Additionally, "marginal" is a generally understood term that underlies a substantial portion of the market designs the Commission has accepted over the past several decades, including most notably Locational Marginal Price (LMP).[257]

110. We also find that, while "reliability" can have many meanings depending on the context, NYISO's proposed tariff language is clear that "reliability" in this context refers to resources' "contributions toward meeting NYSRC resource adequacy requirements."[258] We further find that the initial condition from which resources' reliability contributions

[254] IPPNY and EPSA Comments and Answer at 18-19; MMU Answer at 4; NYISO Deficiency Letter Response at 2-3.

[255] IPPNY and EPSA Comments and Answer at 18-19; MMU Answer at 4; NYISO Deficiency Letter Response at 8-9.

[256] NYISO Deficiency Letter Response at 8, 9.

[257] LMP reflects the cost of serving the last increment of load at a particular location and time and therefore we find that it is a reasonable proposition to assume that participants in NYISO's electricity market generally understand that "marginal reliability contribution" refers to the reliability provided by the last increment of resource capacity added to the system. *See, e.g.*, *Remedying Undue Discrimination through Open Access Transmission Serv. and Standard Elec. Mkt Design*, 100 FERC ¶ 61,138, at P 204 (2002).

[258] Transmittal, attach. II, Proposed Services Tariff §§ 2.3, 5.12.14.3.

would be measured is clearly defined in the proposed tariff as "the Installed Reserve Margin/Locational Minimum Installed Capacity Requirement study model that is approved by the NYSRC for the upcoming Capability Year . . . at the conditions that reflect the expected NYCA system that meets the resource adequacy criterion."[259] In other words, NYISO will use the same resource adequacy model database that is used to establish the IRM and LCR annually to determine the marginal reliability contribution of each resource class.[260]

111. Second, we find that NYISO need not define the discrete Capacity Accreditation Resource Classes in its Services Tariff because the proposed revisions prescribe that resources within a class must have similar marginal reliability contributions.[261] We find that, because the Services Tariff ensures that no resource is unduly advantaged or disadvantaged (i.e., by being grouped with resources that have a significantly higher or lower marginal reliability contributions), compliance with this tariff provision can be objectively measured. Therefore, further definition of Capacity Accreditation Resource Classes in the tariff is not required.

112. We find that the facts in this proceeding differ from those in the PJM proceeding regarding the average ELCC method, and therefore that it is not necessary for NYISO to define the Capacity Accreditation Resource Classes in its tariff. In rejecting PJM's initial average ELCC proposal, the Commission commented that the rule of reason policy would likely require PJM to include the definitions of the ELCC Classes in the tariff.[262] The situation before us is distinguishable from the situation in PJM because the average ELCC methodology requires that the administrator allocate the total capacity value of studied resources among individual resource classes, while ensuring that the sum of the class-level capacity values equals the total capacity value of the studied resources. Therefore, the definition of a resource class under an average ELCC approach directly affects not only the capacity value of the subject class but also the capacity value of all other classes.[263] In contrast, under NYISO's marginal ELCC approach, the marginal reliability contribution of a resource class does not depend on the number and type of

[259] *Id.* § 5.12.14.3.

[260] MMU Answer at 6.

[261] Capacity Accreditation Resource Classes is defined as "A set of Resources and/or Aggregations, . . . with similar technologies and/or operating characteristics which are expected to have similar marginal reliability contributions toward meeting NYSRC resource adequacy requirements for the upcoming Capability Year." Transmittal, attach. II, Proposed Services Tariff § 2.3.

[262] PJM ELCC I, 175 FERC ¶ 61,084 at P 66.

[263] *See* MMU Answer at 14.

other resource classes; it only depends on the definition of the subject class. As we note above, NYISO's proposed Services Tariff revisions bind NYISO to group resources into classes with similar marginal reliability contributions. Therefore, we find that it is not necessary for NYISO to articulate the Capacity Accreditation Resource Classes in its tariff. Further, we agree with NYISO and others that it is beneficial to provide NYISO with the flexibility to redefine resource classes annually so that it can accredit resources as accurately as possible.

113. Protesters rely principally on *Keyspan-Ravenswood* to argue that the rule of reason requires the details of NYISO's marginal capacity accreditation approach to be included in NYISO's Services Tariff rather than its business practice manuals. In *Keyspan-Ravenswood*, the court rejected as arbitrary and capricious the Commission's approval of NYISO's proposal to "translate" its ICAP requirement into a UCAP requirement through amendments to its ICAP Manual rather than its tariff.[264] The translation resulted in a mismatch between generators' supply obligations and LSEs' capacity obligations, causing a reduction of NYISO's IRM from 18% to 12.2%, and a revenue loss of over $20 million to the petitioner, a New York generator.[265] The court, applying the rule of reason, held that reserve margin depletions and economic losses of that magnitude met the test of "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."[266] With regard to NYISO's instant filing, we agree with NYISO that its proposal is distinguishable from the revisions that were the subject of *Keyspan-Ravenswood*, since NYISO's current proposal contains sufficient detail to define the filed rate because it does more than refer to the NYISO manuals without elaboration, which the court found insufficient in *Keyspan-Ravenswood*.

114. Although we have no concerns with the sufficiency of detail specified in NYISO's Services Tariff we direct NYISO to submit a one-time informational filing[267] in this docket within 90 days of the completion of its "Phase 2" stakeholder process, reporting on the final implementation details. This informational filing will afford NYISO with an opportunity to articulate the final implementation details of its market design and afford the Commission and parties to this proceeding with transparency regarding those details. While we appreciate NYISO's voluntary commitment to file additional detail in its Services Tariff upon the completion of Phase 2, we decline to require that NYISO submit

[264] *Keyspan-Ravenswood*, 474 F.3d at 807.

[265] *Id.* at 811.

[266] *Id.* (quoting *City of Cleveland*, 773 F.2d at 1376 (emphasis in original)).

[267] This informational filing will not be noticed for comment or require Commission action.

those details in a compliance filing. Instead, the appropriate venue for any future tariff amendments is an FPA section 205 filing.

4. ICAP Demand Curve Revisions

a. Filing

115. NYISO states that each ICAP Demand Curve is based on a reference point price, which represents the estimated entry cost of a peaking unit minus its estimated annual net revenue from the energy and ancillary services markets.[268] NYISO explains that the ICAP reference point prices are ultimately translated into UCAP reference point prices for use in ICAP Spot Market Auctions using a system-wide derating factor, rather than the peaking unit's specific derating factor. NYISO explains that, as additional intermittent resources are added to its system, the system-wide derating factor will fail to reflect the characteristics of a new peaking unit, which generally has a lower forced outage rate. NYISO states that the MMU has advised it that this disconnect could cause future ICAP Demand Curves to be set too high and lead to inefficiently high consumer payments. Therefore, NYISO proposes to use the peaking unit's specific derating factor to translate ICAP to UCAP for setting reference point prices in the ICAP Demand Curves. NYISO proposes to revise section 5.14.1.2 of the Services Tariff to effectuate this change starting with the Capability Year beginning May 1, 2024.

116. NYISO notes, for informational purposes, that it expects the CLCPA mandates and tariff revisions proposed in the instant filing to create new risk factors that will affect the estimated costs of the peaking unit used in future ICAP Demand Curves.[269] NYISO states that it considered including tariff changes in the instant filing to address these risks but concluded that the current Services Tariff already requires NYISO and its independent consultant to consider these risks when estimating the cost of future proxy peaking plants. NYISO states that it will address how these risks should be reflected in costs estimates during the next quadrennial ICAP Demand Curve reset process for the 2025-2029 Capability Years.

b. Responsive Pleadings

117. NYTOs and the MMU state that they support NYISO's proposed changes to its ICAP Demand Curves.[270] City of New York does not oppose NYISO's proposed changes to the ICAP Demand Curves. However, City of New York disagrees with NYISO's assertion that CLCPA mandates and the proposed changes to the BSM Rules

[268] Transmittal at 40-41.

[269] *Id.* at 41.

[270] NYTOs Comments at 12-13; MMU Comments at 13-15.

and capacity accreditation rules will create additional investment risks.[271] City of New York argues that market conditions, including changes to public policies, fluctuate constantly, and investment risks change concomitantly with market conditions.[272] City of New York contends that the independent consultant should have the unfettered ability to conduct its analysis as it deems appropriate, and argues that it is unfounded to assert that the risks associated with the CLCPA are incrementally greater than the risks considered in previous ICAP Demand Curve resets.[273] City of New York requests that the Commission direct NYISO to refrain from providing any directives, instructions, recommendations, or suggestions to the independent consultant regarding how it evaluates investment risk.[274]

118. In its answer, NYISO contends that there is no basis for City of New York's concerns and that the Commission should deny City of New York's request. NYISO asserts that its filing is clear that NYISO is not proposing any changes to the NYISO ICAP Demand Curve reset process and that NYISO only informed the Commission that it expected the independent consultant to account for any changing investment risks associated with the CLCPA.[275]

c. Determination

119. We accept NYISO's proposed changes to its ICAP Demand Curves as just and reasonable and not unduly discriminatory or preferential. We find that it is appropriate to use the reference unit's individual derating factor rather than the system-wide derating factor to translate ICAP to UCAP for setting reference point prices in light of the changes to NYISO's capacity accreditation rules accepted in this order. We also agree with NYISO and the MMU that, as NYISO's resource mix changes over time, the reference unit's individual derating factor could differ materially from the system-wide derating factor, and it is therefore appropriate to use the reference unit's individual derating factor in the ICAP Demand Curves.

120. We deny City of New York's request that we impose additional directives on NYISO regarding its interactions with its independent consultant. NYISO is clear that its statement regarding future investment risks is only for informational purposes, and that the current tariff requires NYISO and its consultant to consider these risks when

[271] City of New York Comments at 8.

[272] *Id.* at 9.

[273] *Id.* at 10.

[274] *Id.* at 10-11.

[275] NYISO March Answer at 36.

estimating the cost of new entry for the reference unit. Furthermore, NYISO does not propose any changes to its tariff or ICAP Demand Curve reset process related to the consideration of such risks. Therefore, we find that City of New York's request is premature. We note that the Services Tariff requires that NYISO file its ICAP Demand Curves with the Commission pursuant to FPA section 205 at the conclusion of the ICAP Demand Curve reset process,[276] and City of New York will have an opportunity to comment on NYISO's proposal.

The Commission orders:

(A) NYISO's filing is hereby accepted, effective May 11, 2022, as requested, as discussed in the body of this order.

(B) NYISO is hereby directed to submit a compliance filing with revisions to its Services Tariff within 30 days of the issuance date of this order, replacing its inadvertent continued use of "Adjusted Installed Capacity" in the formulas for its UCAP requirements with "Installed Capacity," as discussed in the body of this order.

(C) NYISO is hereby directed to submit a one-time informational filing in this docket within 90 days of the completion of its "Phase 2" stakeholder process to report on the final implementation details.

By the Commission. Commissioner Danly is concurring in part and dissenting in part with a separate statement attached.
Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

[276] NYISO, Services Tariff, § 5.14.1.2.1.11.

Appendix A

Entities filing interventions, protests and/or comments, and answers are as follows:

Entity	Short Name or Acronym
Advanced Energy Economy**	
Advanced Energy Management Alliance	AEMA
Alliance for Clean Energy New York, Inc.**	
American Clean Power Association**†	ACP
American Public Power Association*	
Borrego Solar Systems, Inc.**	
Calpine Corporation±	
Centrica Business Solutions Optimize, LLC**	
CHPE LLC*	
City of New York	
Clean Energy Advocates[277]	CEAs
Cypress Creek Renewables, LLC**^	
Eastern Generation, LLC±	
Electric Power Supply Association	EPSA
Enel North America, Inc.**	
Energy Spectrum, Inc. and E Cubed Company, LLC†*	
Enerwise Global Technologies, LLC d/b/a CPower*	
Equinor Wind US LLC	Equinor
Exelon Corporation, Constellation Energy Generation, LLC, and its Affiliates*	
GenOn Bowline, LLC and GenOn Energy Management, LLC	GenOn
H.Q. Energy Services (U.S.) Inc.*	
Helix Ravenswood, LLC	Ravenswood
Independent Power Producers of New York, Inc.±	IPPNY
Key Capture Energy, LLC	Key Capture
Monitoring Analytics, LLC, acting in its capacity as the	

[277] CEAs include: Sierra Club; NRDC; Sustainable FERC Project; ACP; Advanced Energy Economy; Alliance for Clean Energy New York; Cypress Creek Renewables, LLC; Enel North America, Inc.; New York Battery and Energy Storage Technology Consortium; Centrica Business Solutions; Tesla, Inc.; Borrego Solar, Inc.; and Voltus, Inc.

Independent Market Monitor for PJM Interconnection, L.L.C.*	
Multiple Intervenors*	
Natural Resources Defense Council**±	NRDC
New York Battery and Energy Storage Technology Consortium**	
New York State Energy Research & Development Authority	NYSERDA
New York State Public Service Commission±	
New York Transmission Owners±[278]	NYTOs
North East Offshore, LLC*	
NRG Power Marketing LLC*	
PEAK Coalition[279]^	
Potomac Economics, acting in its capacity as the Market Monitoring Unit for NYISO±	MMU
PUBLIC CITIZEN, INC*	
Shell Energy North America (US), L.P. and Shell Renewables and Energy Solutions	Shell
Sierra Club**	
Solar Energy Industries Association*	
Sustainable FERC Project**	
Tesla, Inc.**	
The New York Association of Public Power*	
Utility Intervention Unit of the New York State Department of State's Division of Consumer Protection^±	UIU
Vistra Corp. and Dynegy Marketing and Trade, LLC	Vistra
Voltus, Inc.**^	

* Entities submitting interventions only
** Entities submitting comments and/or answers as part of a coalition
† Entities submitting motions to intervene out of time
± Entities submitting answers
^ Entities submitting comments and/or answers but no motion to intervene

[278] NYTOs consist of Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority; 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.

[279] The PEAK Coalition consists of UPROSE, THE POINT CDC, New York City Environmental Justice Alliance, New York Lawyers for the Public Interest, and Clean Energy Group.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc. Docket No. ER22-772-001

(Issued May 10, 2022)

DANLY, Commissioner, *concurring in part and dissenting in part*:

1. I concur in today's approval[1] of New York Independent System Operator, Inc.'s (NYISO) proposals regarding resource accreditation and demand curve computation. I dissent from its approval of NYISO's proposed revisions to its buyer-side market power mitigation rules (BSM Rules).

2. I cannot support the portion of the order that excludes state-preferred resources that come under New York State's Climate Leadership and Community Protection Act (CLCPA) from NYISO's BSM Rules. As I have explained before,[2] buyer-side market mitigation is required in order for us to find market rates to be just and reasonable.

[1] *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (2022).

[2] *See, e.g.*, Statement of James P. Danly, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000 (Oct. 27, 2021). I issued a series of white papers to serve as a basis for public engagement on a number of the issues that are squarely raised in this proceeding. *See* Comm'r James P. Danly, *White Paper: Commissioner James Danly on the Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets*, FERC (July 15, 2021), https://cms.ferc.gov/news-events/news/white-paper-commissioner-james-danly-requirement-competitive-markets-be-0; Comm'r James P. Danly, *White Paper: Commissioner James Danly on Results of The PJM Capacity Auction (2022/2023 RPM Base Residual Auction)*, FERC (June 17, 2021), https://cms.ferc.gov/news-events/news/white-paper-commissioner-james-danly-results-pjm-capacity-auction-20222023-rpm; Comm'r James P. Danly, *White Paper: Commissioner James Danly on the Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets*, FERC (June 17, 2021), https://cms.ferc.gov/news-events/news/white-paper-commissioner-james-danly-requirement-competitive-markets-be-protected; Comm'r James P. Danly, *Danly Office White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets*, FERC (May 20, 2021), https://www.ferc.gov/news-events/news/danly-office-white-paper-requirement-competitive-markets-be-protected-exercise; Comm'r James P. Danly, *Commissioner James Danly Proposal: State Option to Choose Resources for RTO Capacity Markets* (Apr. 15, 2021), https://www.ferc.gov/news-events/news/commissioner-james-danly-proposal-state-option-choose-resources-rto-capacity.

3. NYISO proposes to exclude certain resources from the BSM Rules or otherwise from an offer floor.[3] According to NYISO:

> [i]f the BSM Rules do not evolve, they are likely to more significantly interfere with CLCPA policies by mitigating new entrants that are necessary to the achievement of New York State's policy objectives. In particular, there is cause for concern that the BSM Rules will result in over-mitigation of new intermittent and storage resources entering the capacity market as part of the NYISO's Class Year 2021 interconnection cost allocation process. Over-mitigation of such resources would result in needlessly higher costs to consumers, and market inefficiencies.
>
> . . .
>
> This change will help to ensure that the NYISO is not engaging in over- or under-mitigation, while accommodating New York State's reserved authority under section 201 of the FPA to address its resource mix. It is just, reasonable, and not unduly discriminatory to exclude resources that serve CLCPA objectives from the BSM Rules because the statute, and state programs adopted thereunder, are expected to be the principal driver of changes to the resource mix in New York State over the next two decades. [4]

4. As I previously explained in another proceeding,[5] the institution of BSM Rules and the consequent mitigation of the offers of state-supported resources do not represent an unlawful intrusion into the FPA's reservation of the states' authority over generation. The courts of appeals in both the Third Circuit and the District of Columbia Circuit have unequivocally rejected this argument in *New Jersey Board of Public Utilities v. FERC*[6] and *New England Power Generators Association, Inc. v. FERC*.[7] With respect to NYISO, the Commission has as well.[8]

[3] New York Independent System Operator, Inc. January 5, 2022 Transmittal, Docket No. ER22-772-000, at 44-45. These include wind, solar, storage, hydroelectric technology (including tidal, ocean and wave generation), geothermal, fuel cells powered by non-fossil fuels, demand response (including both Special Case Resources and Distributed Energy Resources) and other resource types. *Id.* at 44.

[4] *Id.* at 3.

[5] *See* Statement of James P. Danly, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000.

[6] 744 F.3d 74 (3d Cir. 2014) (*NJBPU*).

5. The Third Circuit recognized that states "are free to make their own decisions regarding how to satisfy their capacity needs, but they 'will appropriately bear the costs of [those] decision[s],' including possibly having to pay twice for capacity."[9] This equally applies to the decisions of New York state.

6. NYISO cites my statement in a different proceeding involving PJM Interconnection, L.L.C. (PJM) as arguing that "buyer-side market power measures must continue to guard against artificial price suppression."[10] Correct. Mitigation of the price-suppressive effects of state subsidies is required to ensure that rates produced by NYISO's capacity market are just and reasonable. Courts have so held.[11]

7. In 2011, the Commission issued a series of orders approving changes to minimum offer price rules in PJM that included elimination of an exemption from mitigation for resources built pursuant to a state mandate. On appeal, New Jersey tried to argue that the Commission interfered with its rights under the FPA saying: "'FERC here interferes directly and materially with state efforts to sponsor new capacity resources precisely because those efforts could affect market prices.'"[12] The Third Circuit determined that New Jersey was wrong.[13] The court explained that "what FERC has actually done here is

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[7] 757 F.3d 283 (D.C. Cir. 2014) (*NEPGA*).

[8] *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,088, at P 12 (2016) (The Commission based "its decision to require NYISO to implement a renewable resources exemption on the Commission's duty to ensure just and reasonable rates pursuant to the FPA," and not on whether the exemption is consistent with federal, State, and municipal renewable energy policies that encourage the development of renewable resources.).

[9] *NJBPU*, 744 F.3d at 97 (quoting *Conn. Dep't of Pub. Util. Control*, 569 F.3d 477, 481 (D.C. Cir. 2009)) (internal citation omitted).

[10] New York Independent System Operator, Inc. January 5, 2022 Transmittal, Docket No. ER22-772-000, at 14 & n.38 (citing Statement of James P. Danly, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000, at PP 5-6). As NYISO notes, challenges to PJM's minimum offer price rules are pending on appeal before the United States Court of Appeals for the Third Circuit. *Id.* at 14 & n.41.

[11] *NJBPU*, 744 F.3d at 96-102; *see also id.* at 97 (rejecting New Jersey's assertion that the Commission is "preventing New Jersey from using the resources it has chosen to promote," holding that "FERC is doing no such thing.").

[12] *Id.* at 98 (citation omitted).

[13] *See id.*

permit states to develop whatever capacity resources they wish, and to use those resources to any extent that they wish, while approving rules that prevent the state's choices from adversely affecting wholesale capacity rates. Such action falls squarely within FERC's jurisdiction."[14]

8. The court held:

> After reviewing the FERC Orders at issue here and the relevant case law, *we conclude that FERC did not exceed its jurisdiction in eliminating the state-mandated provision*. Under the FPA, FERC has jurisdiction over rules affecting the rates of the transmission or sale of energy in interstate commerce. *See* 16 U.S.C. § 824d. Here, it is undisputed that New Jersey and Maryland's plans to introduce thousands of megawatts of new capacity into the Base Residual Auction would have had an effect on the prices of wholesale electric capacity in interstate commerce. *See Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354, 374, 108 S.Ct. 2428, 101 L.Ed.2d 322 (1988) (holding, among other things, that FERC had jurisdiction over power allocations that affect wholesale rates, and stating that "[s]tates may not regulate in areas where FERC has properly exercised its jurisdiction to determine just and reasonable wholesale rates or to insure that agreements affecting wholesale rates are reasonable.") (emphasis added); *Municipalities of Groton v. FERC*, 587 F.2d 1296, 1302 (D.C. Cir. 1978) (rejecting jurisdictional challenge to FERC's authority to levy deficiency charges on utilities that failed to procure generating capacity sufficient to meet its load requirements, and stating that, "[i]t is sufficient for jurisdictional purposes that the deficiency charge affects the fee that a participant pays for power and reserve service, irrespective of the objective underlying that charge.").[15]

9. The D.C. Circuit reached the same conclusion later that year in an appeal of ISO New England's buyer-side market power mitigation provisions.[16] The petitioners in that case similarly argued that "the orders serve to dictate which resources a utility must use to satisfy its capacity obligations, in violation of the FPA" and that "FERC's orders impermissibly determine the makeup of a state's resource portfolio."[17]

[14] *Id.* (footnote omitted).

[15] *Id.* at 96 (emphasis added). The Third Circuit went on to reject New Jersey's assertion that the Commission "is preventing New Jersey from using the resources it has chosen to promote," holding that "FERC is doing no such thing." *Id.* at 97.

[16] *See NEPGA*, 757 F.3d at 291-98.

10. The court rejected the claim that the Commission, in imposing buyer-side market power mitigation measures, "improperly regulat[ed] 'facilities used for the generation of electric energy.'"[18] In finding that the Commission acted within its jurisdiction, the court explained that "states remain free to subsidize the construction of new generators, and load serving entities to build or contract for any self-supply they believe is necessary" and that the Commission acted within its authority in "regulat[ing] the 'price constructs that result in offers into the capacity market from these resources that are not reflective of their actual costs.'"[19]

11. The court held:

> Out-of-market resources—whether self-supplied, state-sponsored, or otherwise—directly impact the price at which the Forward Capacity Market auction clears. *As the price of capacity is indisputably a matter within the Commission's exclusive jurisdiction, FERC likewise has jurisdiction to mitigate buyer-side market power as to out-of-market entrants.* We agree with the Commission's finding that it has jurisdiction over mitigation matters "affecting or relating to wholesale rates" under FPA § 201 and 206. Third Order ¶ 220 (emphasis omitted) (citing *Conn. Dep't of Pub. Util. Control*, 569 F.3d at 478, 481). We stress that FERC's mitigation measures here do not entail direct regulation of facilities, a matter within the exclusive control of the states. *See* 16 U.S.C. § 824(b)(1). The Commission also found that uneconomic entry, regardless of resource and regardless of intent, "can produce unjust and unreasonable prices by artificially depressing capacity prices." *Id.* ¶ 170. *As it is FERC's statutory obligation to ensure that rates are appropriate, we must respect its decision to maintain just and reasonable rates through curbing or mitigating buyer-side market power.*[20]

12. As in *NJBPU* and *NEPGA*, state subsidies in New York are growing and provide out-of-market subsidies to preferred resource types. Unmitigated out-of-market subsidies

[17] *Id.* at 290.

[18] *Id.* at 291 (quoting 16 U.S.C. § 824(b)(1)).

[19] *Id.* at 291 (citation omitted); *see also id.* at 290 (reaffirming "that the Commission has jurisdiction to regulate certain parameters of the capacity market related to the price of capacity, even if those determinations touch on states' authority.") (citation omitted).

[20] *Id.* at 290-91 (emphasis added) (citation omitted).

will suppress clearing prices in the ICAP market, which will distort bidding behavior and warp price signals. As a result, NYISO's proposed BSM Rules that exclude state-favored resources from mitigation will fail to prevent the exercise of market power and thereby fail to ensure that capacity market prices are just and reasonable.

13. We are obligated to evaluate the effects of state subsidies on our jurisdictional wholesale markets in order to ensure that rates that these markets produce will be just and reasonable.[21] We have no latitude to evade this bedrock requirement of our statute. And we cannot ignore the effects of state subsidies in order to favor certain categories of generators, even if those also happen to be the generators preferred by the states, and even if that state preference is enshrined in state law.

14. NYISO argues that there will be no cost-shifting to other states.[22] Even if this were true, the argument ignores the inevitable price-suppression its proposal will have. The generators that will suffer will be the marginal dispatchable units whose offers must reflect their fuel costs.[23] They will fail to clear the market when subsidized units undercut their offers and will end up being denied the capacity payments they require to remain solvent. The ultimate result is foreordained: the retirement of dispatchable resources as more subsidized resources drive them out of the market.

15. Aside from the fact that these suppressed prices cannot be found to be just and reasonable, the consequent retirements will have profound consequences for the entire system and the effects will extend beyond New York's borders. When the inevitable price suppression caused by unmitigated state subsidies results in the premature retirement of too many conventional, dispatchable resources, reliability will be compromised. The Commission knows the consequences of these retirements. As we have recently been reminded by the North American Electric Reliability Corporation, dispatchable generation is absolutely necessary to maintain system reliability:

> The North American bulk-power system (BPS) is undergoing major transformation, driven by a rapidly changing generation resource mix. Traditional baseload generation plants are retiring, while significant amounts of new natural

[21] 16 U.S.C. § 824d.

[22] New York Independent System Operator, Inc. January 5, 2022 Transmittal, Docket No. ER22-772-000, at 30 ("there is also no prospect that the costs of New York State's policy choices will be shifted to customers in other states") (citation omitted).

[23] Another significant challenge is that gas-fired generators do not sign firm transportation contracts because they are unable to recover the additional cost in the markets. This creates a reliability problem that will only get worse due to artificial price suppression resulting from state subsidies.

> gas and variable energy generating resources are being developed. During this transition, natural gas-fired generation is becoming more critical to provide both "bulk energy" and "balancing energy" to support the integration of variable energy resources.[24]

16. And, even as the Commission approves another proposal that undercuts the necessary market prices to ensure a reliable mix of generation, the harmful effects of such policies are becoming more evident. California is now forecasting a 1,700 MW capacity shortfall this summer—increasing to 1,800 MW by 2025—in the late afternoon hours when the output of solar facilities starts to wane and there is no dispatchable capacity available to pick up the slack.[25] And similar warnings are being issued by other system operators across the United States "as traditional power plants are being retired more quickly than they can be replaced by renewable energy and battery storage."[26]

17. NYISO's BSM Rule revisions are unjust and unreasonable because they will allow state subsidies to suppress capacity prices through the exercise of buyer-side market power. This price suppression will deprive needed dispatchable generation of the revenue required to remain in service which will result in the premature retirement of generators with needed attributes. NYISO will be increasingly unable to ensure resource adequacy as those generators exit the market and reliability, in turn, will suffer.

For these reasons, I respectfully concur in part and dissent in part.

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James P. Danly
Commissioner

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[24] James B. Robb, et al., Statement of the North American Electric Reliability Corporation, 2021 Annual Reliability Technical Conference, Docket No. AD21-11-000, at 1 (filed Oct. 1, 2021).

[25] *See* The Energy Daily, *California officials foresee early-evening 1,700 MW grid shortfall this summer*, (May 10, 2022).

[26] *See The Wall Street Journal, Electricity Shortage Warnings Grow Across U.S.,* (May 8, 2022).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc Docket No. ER22-772-001

(Issued May 10, 2022)

CHRISTIE, Commissioner, *concurring*:

1. I concur with today's order for the following reasons.

2. I strongly support NYISO's proposal to adopt a marginal capacity accreditation design that would accredit resource types based on their marginal contribution to power system reliability thereby aligning capacity payments with a resource's reliability value and reflecting a resource's marginal value to the system.[1] The use of marginal valuations is more accurate, and thus superior, to a methodology that uses average valuations.[2]

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[1] "NYISO proposes to use its current capacity accreditation procedures through the Capability Year beginning on May 1, 2023, and then implement the marginal accreditation design annually thereafter." *N.Y. Indep. Sys. Operator, Inc*., 179 FERC ¶ 61,102, at P 44 (2022) (citations omitted). While in this phase of its proposal NYISO has not determined whether it will use the Effective Load Carrying Capability (ELCC) methodology in its accreditation procedures, it has noted that "it would calculate Capacity Accreditation Factors using a system . . . ELCC . . . or equivalent methodology, such as the Marginal Reliability Improvement (MRI) proposed by the MMU." *Id*. P 46; *see also, e.g.*, *id*. P 53 (". . . NYISO explains that it would calculate a Capacity Accreditation Resource Class's marginal reliability contribution using either the ELCC technique or the MMU's proposed MRI technique.").

[2] *See PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 (2021) (Christie, Comm'r, dissenting at P 9) ("Not only has the [Independent Market Monitor for PJM] extensively detailed flaws in PJM's ELCC proposal, but since [the Commission's] April 30 Order we have received on-the-public-record evidence from Dr. David Patton, President of Potomac Economics which is the IMM or Market Monitoring Unit for several of the nation's ISOs. Dr. Patton agrees with what is to me a fundamental point made by the PJM IMM: *only a marginal valuation – not average* – will accurately produce capacity accreditations for compensation and will deliver the reliability value relied upon by the RTO.") (emphasis added) (footnotes omitted) (quoting May 25, 2021 Technical Conference regarding Resource Adequacy in the Evolving Electricity Sector, Docket No. AD21-10-000, Tr. 144:1-6; 170:1-9; 181:15-21; 182:21-25) (available at https://www.ferc.gov/news-events/news/commissioner-christies-dissent-order-concerning-pjms-proposed-elcc); Potomac Economics, January 26, 2022 Comments at 3 ("NYISO's proposal to use marginal capacity accreditation is a major improvement to its

Getting capacity valuations right is essential both for reliability purposes and to ensure consumers do not pay for capacity that does not perform when needed.

3. With regard to the Buyer Side Mitigation proposal from NYISO, as I have stated before, it is critically important to my concurrence that NYISO is a *single-state* ISO:

> We start with the proposition that each state in the United States has the sovereign authority, under its general police power, to *choose* the generating resources necessary to meet its own state's power supply needs. The FPA does not contain any specific provision that pre-empts the states from exercising this authority, even if a state chooses to allow its utilities to enter an RTO. Further, FERC does not have the authority to order a state to build a certain type of generation resource, nor can FERC order a state to retire or ban certain types of resources. Congress has enacted no federal resource mandate nor given FERC the authority to enforce such a mandate, despite occasional legislative efforts to do so.
>
> Here the record shows – *and this is critically important to my analysis* – that no one has suggested that this single-state ISO's proposal to accommodate the resource decisions made by the New York legislature will harm consumers in other states. Thus, there being no evidence in this record that citizens of other states will be made to pay for New York's policy decisions through the potential impacts of NYISO's proposed tariff revisions, I conclude that any costs will be confined to New York. Based on the particular set of facts in this record, I do not find that the NYISO proposal "as-applied" results in rates that are "unjust, unreasonable and unduly discriminatory or preferential" under the FPA. *If the people and businesses of New York do not like the impacts of their new state laws, their recourse is to the ballot box.*
>
> A similar analysis could well lead to a different outcome in a *multi-state* RTO, if the record showed that the RTO was implementing one state's public policies as to preferred resources, and that implementation resulted in impacts being shifted to consumers in one or more other states in the

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capacity market rules. A marginal approach will pay resources based on their expected availability at times when reliability is most threatened. Marginal capacity values will naturally change over time as the resource mix and needs of the system change. This will appropriately align capacity payments with the incremental reliability impact that an investment or retirement decision would have on the system. Marginal capacity payments provide signals to invest in the most efficient mix of clean energy resources, build or maintain additional resources that are needed for reliability, and retire the surplus generators that provide the least reliability benefit.").

multi-state RTO. *Such impacts and cost-shifting in multi-state RTOs, if proven by the record, could well be unjust, unreasonable and unduly discriminatory or preferential under the FPA*.[3]

For these reasons, I respectfully concur.

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Mark C. Christie
Commissioner

[3] *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022) (Christie, Comm'r, concurring at PP 4-6) (emphases in the original and added) (available at https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-independent); *see also N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 174 FERC ¶ 61,110 (2021) (Christie, Comm'r, concurring at P 3) ("I also note that the NYISO is a single-state ISO and I have been able to locate no evidence in the record that the New York policies at issue in today's order are causing cost-shifting onto consumers in other states. *If consumers in other states were disadvantaged, I may well view this matter differently*.") (emphasis added) (available at https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-state-public); *cf.* Commissioner Mark C. Christie, Fair RATES Act Statement on PJM Minimum Offer Price Rule (MOPR) Revisions, Docket No. ER21-2582-000 at P 6 (Oct. 19, 2021) (". . . I would have proposed that PJM formulate a replacement for the current MOPR based on three broad principles: (1) a state may designate specific or categorical resources as 'public policy resources' and such designated resources will be funded through a mechanism *chosen by the state* outside of the capacity market . . . and (3) *non-sponsoring state consumers would not be forced to pay for another state's designated public-policy resources*.") (footnotes omitted) (emphasis in the original and added) (available at https://www.ferc.gov/news-events/news/commissioner-christies-fair-rates-act-statement-pjm-mopr).