

183 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER23-1824-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued June 30, 2023)

1. On May 3, 2023, pursuant to section 205 of the Federal Power Act¹ and Part 35 of the Commission’s regulations,² the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff) related to the retention, termination, and transfer of Capacity Resource Interconnection Service (CRIS). As discussed below, we accept NYISO’s filing effective July 3, 2023, as requested.

I. Background

2. NYISO states that CRIS is required in order to be eligible to become a NYISO Installed Capacity (ICAP) Supplier or receive Unforced Capacity Deliverability Rights (UDR)³ or External-to-ROS Deliverability Rights (EDR).⁴ NYISO explains that CRIS

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2022).

³ “[UDRs] are rights, as measured in [megawatts (MWs)], associated with: (i) new incremental controllable transmission projects, and (ii) new projects to increase the capability of existing controllable transmission projects that have UDRs, that provide a transmission interface to a Locality.” NYISO, NYISO Tariffs, NYISO MST, § 2.0 (MST Definitions), 2.21 (MST Definitions – U) (6.0.0). Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in NYISO’s OATT and Services Tariff.

⁴ EDRs are “[r]ights, as measured in MW, associated with incremental transfer capability: (i) on a new or existing Scheduled Line over an External Interface, with a terminus in Rest of State, and (ii) that has CRIS obtained pursuant to Attachment S of the

may be obtained in three ways: (1) through a transfer from a facility with existing CRIS, (2) through a deliverability evaluation in a Class Year Deliverability Study, or (3) through an Expedited Deliverability Study pursuant to Attachment S to the OATT.⁵

3. Attachment S to the OATT sets forth the rules governing the retention and termination of CRIS as well as the study methodology and cost allocation rules for the Class Year Deliverability Study and Expedited Deliverability Study.⁶ Attachment S of the OATT allows a facility that has gone into service and has CRIS to retain it as long as the facility has not withdrawn from the NYISO interconnection queue and is not CRIS-inactive for more than three continuous years unless otherwise provided for in section 25.9.3.1 of the OATT.⁷ NYISO states that, under the existing rules for CRIS termination, a resource's CRIS will only terminate if it is not utilized *at all* for three years, unless transferred prior to its termination. NYISO contends that, under current rules, a resource can therefore retain its full CRIS even if it offers only 0.1 MW into the ICAP market once during a three-year period. In addition, NYISO states that retired units are also allowed to retain their full CRIS value for three years post-retirement.⁸

4. NYISO explains that CRIS transfers may be subject to Buyer Side Mitigation determinations and/or physical withholding reviews if either side of the transfer is in a Mitigated Capacity Zone. In addition, NYISO states that the transferor's election to remove an ICAP Supplier from a Mitigated Capacity Zone may be subject to an audit and review for physical withholding and potential penalties.⁹

5. NYSIO states that, as part of interconnection process reforms accepted by the Commission in 2020,¹⁰ it has worked with its stakeholders to identify mechanisms

OATT." NYISO, NYISO Tariffs, NYISO MST, § 2.0 (MST Definitions), 2.5 (MST Definitions - E) (20.0.0).

⁵ Transmittal Letter at 3 (citing NYISO, NYISO Tariffs, NYISO MST, § 5.0 (MST Control Area Services: Rights and Obligations), § 5.12.1 (Requirements Applicable to Installed Capacity Suppliers) (41.0.0)).

⁶ *Id.* at 4.

⁷ *Id.* at 6 (citing NYISO, NYISO Tariffs, NYISO OATT, attach. S § 25.0 (Rules to Allocate Responsibility) (10.0.0), § 25.9.3.1 (Retaining CRIS Status)).

⁸ *Id.* at 10.

⁹ *Id.* at 7-8.

¹⁰ *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-638-000 (Dec. 19, 2019) (delegated order).

through which to tighten the CRIS retention and termination rules and identify additional improvements to the CRIS rules in Attachment S to the OATT, resulting in the proposed revisions.¹¹

II. Filing Summary

6. NYISO states that the proposed improvements to its CRIS rules in Attachment S of the OATT fall into four categories: (1) retention and termination of inactive and underutilized CRIS; (2) CRIS transfers; (3) the manner in which inactive, underutilized and transferred CRIS is modeled in deliverability studies; and (4) rules for physical withholding evaluations of CRIS transfers.¹²

7. NYISO explains that the proposed OATT revisions in the first category regarding CRIS retention and termination address internal facilities not using CRIS at all, facilities underutilizing their CRIS, and transmission facilities with UDRs or EDRs that are incapable of utilizing their full CRIS due to physical limitations in neighboring control areas.¹³ NYISO states that, as a whole, the proposed changes to the CRIS retention and termination rules help prevent the retention of CRIS by suppliers that are unable or unwilling to fully utilize their CRIS. NYISO anticipates that the changes may increase capacity deliverability headroom in deliverability studies, and thereby potentially lessen the need for deliverability upgrades.¹⁴

8. NYISO-proposes revisions to allow a deactivated facility with unexpired CRIS to voluntarily relinquish its CRIS in full by notifying the NYISO at any point during the calendar year, subject to specific notification requirements set forth in section 25.9.3.2.1 of the OATT. According to NYISO, the termination will be effective the date NYISO has completed processing the termination request and provided such notice to the requesting facility owner. NYISO states that it will cease to model the corresponding CRIS in the applicable deliverability studies that commence after the effective date.¹⁵ NYISO also proposes to allow for partial CRIS termination for facilities underutilizing their existing CRIS.¹⁶ NYISO avers that it will calculate a facility's CRIS utilization¹⁷

¹¹ Transmittal Letter at 9.

¹² *Id.*

¹³ *Id.* at 10.

¹⁴ *Id.* at 13

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 11.

and its CRIS utilization ratio (i.e., the ratio of the monthly CRIS utilization to its total applicable seasonal CRIS value), and if the CRIS utilization ratio value falls below 90% for every month for three consecutive years, measured on a rolling basis, the facility's CRIS will be subject to reduction.¹⁸ NYISO adds that, consistent with existing practice, it will make all CRIS changes public, including those due to full or partial CRIS termination.¹⁹

9. Additionally, NYISO proposes revisions to partially terminate CRIS for UDR/EDR transmission facilities to the extent such facilities are incapable of utilizing their full CRIS due to physical limitations in the neighboring control areas, unless the facility can demonstrate that it is capable of delivering MW of energy to the New York Control Area interface equivalent to its MW of CRIS before the end of the three-year period starting from the date of its initial synchronization.²⁰

10. NYISO states that it proposes revisions to the CRIS transfer rules in sections 25.9.4 and 25.9.5 of the OATT to create additional flexibility for same location CRIS transfers and to enhance notice requirements related to contemplated CRIS transfers. NYISO states that under current rules a market participant with CRIS can only transfer CRIS to another facility interconnecting at the same electrical location if the transferor facility is deactivating, and the new unit will be online before the CRIS expires. For different location CRIS transfers, however, NYISO explains that the CRIS can be transferred to a facility at a different electrical location without deactivating the transferring facility. NYISO states that its proposal more closely aligns these two procedures by allowing a facility to transfer part or all of its CRIS to a facility located at the same electrical location regardless of whether it is deactivating. NYISO asserts that this allows a transferor facility that is in the process of deactivating to transfer CRIS that it will no longer use, thereby allowing it to remain active in the energy market only or use only part of its CRIS.²¹ NYISO contends that these proposed revisions to the CRIS transfer rules will allow more flexibility as more public policy resources come on to the

¹⁷ CRIS utilization is the MW sum for a given month of the Installed Capacity Equivalent of Unforced Capacity that is: (1) offered into ISO capacity auctions; (2) certified through a Bilateral Transaction(s); and (3) exported to an External Control Area. *Id.*

¹⁸ NYISO states that CRIS will be reduced to the MW level of its existing CRIS values multiplied by the sum of (1) the maximum utilization ratio for any month within the prior three-year period and (2) 0.05, rounded to the nearest tenth of a MW. *Id.*

¹⁹ *Id.* at 13.

²⁰ *Id.* at 12.

²¹ *Id.* at 13.

system, and may facilitate efficient retirements and repowering of resources being replaced by newer technologies.²²

11. NYISO states that its proposed tariff revisions also clarify whether CRIS that is subject to relinquishment, termination, or transfer will be modeled in the Class Year Deliverability Study and the Expedited Deliverability Study in section 25.7.8.2 of the OATT. NYISO states that it proposes to require facilities whose CRIS will expire prior to a deliverability study and who intend to transfer their CRIS rights prior to the applicable study's completion to inform NYISO prior to the study start.²³ According to NYISO, the proposed modeling revisions will allow NYISO to remove existing CRIS from the deliverability base case when it is non-transferable or that a retired facility has no intention of transferring. NYISO asserts that this could potentially allow new facilities to satisfy the Deliverability Interconnection Standard (*i.e.*, be deemed deliverable) without the need for System Deliverability Upgrades or with less costly System Deliverability Upgrades. NYISO adds that the specific timing requirements for the proposed notifications help expedite finalization of deliverability base cases.²⁴

12. NYISO states that it also proposes revisions to the existing physical withholding rules in the Services Tariff to clarify how physical withholding determinations will apply to market participants that intend to transfer CRIS at the same location from a facility that will remain active. NYISO explains that the proposed revisions to its Market Mitigation Measures in section 23.2 and 23.4.5.6 of the Services Tariff allow an ICAP Supplier to obtain an *ex ante* physical withholding review from NYISO when transferring some or all of its CRIS at the same location without a deactivation.²⁵

13. Finally, NYISO explains that its proposed revisions to the OATT and Services Tariff also include minor revisions intended to conform, clarify or clean-up existing language.²⁶

III. Notice Filing and Responsive Pleadings

14. Notice of NYISO's filing was published in the *Federal Register*, 88 Fed. Reg. 29,899 (May 9, 2023), with interventions and protests due on or before May 24, 2023. The New York State Public Service Commission filed a notice of intervention.

²² *Id.* at 15.

²³ *Id.* at 16.

²⁴ *Id.* at 18.

²⁵ *Id.* at 18-19.

²⁶ *Id.* at 21-23.

Calpine Corp., Direct Energy Business Marketing, LLC, Helix Ravenswood LLC, New York Transmission Owners,²⁷ and NRG Power Marketing LLC filed timely motions to intervene. Elevate Renewables F7, LLC (Elevate) and LIPA filed timely motions to intervene and comments.

15. LIPA states that it does not oppose NYISO's proposal to update the CRIS retention and termination rules for existing facilities internal to the NYISO control area. However, LIPA states that it is important to recognize that NYISO's proposal has a limited scope. LIPA contends that issues relating to the interaction of CRIS rights with interregional transmission facilities with external UDRs remain unaddressed.²⁸ LIPA argues that misalignments between the NYISO capacity market rules and external market rules create a significant challenge to acquiring available external resources within the three-year forward commitments for participation in the short-term NYISO capacity market. LIPA asserts that this misalignment places external controllable interregional tie lines at a competitive disadvantage with internal resource suppliers for the purposes of market strategy and economic evaluation. LIPA states that it will continue working on additional improvements to NYISO's CRIS rules to better align and accommodate inter-ISO capacity transactions over interregional ties with UDRs.²⁹

16. Elevate states that it supports NYISO's proposal to refine its rules related to the retention, termination, and transfer of CRIS. Elevate states that it appreciates NYISO's recognition that as the grid transitions towards greater reliance on renewable and energy storage resources to meet New York State's clean energy goals it is important to provide public policy resources with flexible rules that allow these resources to timely replace existing thermal generators.³⁰ Elevate contends that NYISO's proposed revisions to section 25.9.4 of the OATT will provide developers like Elevate with some added flexibility in timing CRIS transfers and a more realistic path to incrementally develop replacement resources at the same site as retiring resources.³¹

²⁷ The New York Transmission Owners are: Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., Long Island Power Authority (LIPA), New York Power Authority, Niagara Mohawk Power Corp., New York State Electric & Gas Corp., and Rochester Gas & Electric, and Orange and Rockland Utilities, Inc.

²⁸ LIPA Comments at 2.

²⁹ *Id.* at 3.

³⁰ Elevate Comments at 2.

³¹ *Id.* at 5.

17. Elevate contends that, while NYISO's proposal to clarify and add flexibility to the rules related to the transfer of CRIS from retiring resources represents an important step towards achieving NYISO's objectives, Elevate believes that there are additional steps that can and should be taken to eliminate existing barriers to the efficient replacement of retiring generation resources.³² Thus, although Elevate supports NYISO's proposed tariff revisions, Elevate encourages NYISO to consider: (1) updating its restrictions on the timeline for retiring resources to transfer CRIS to better reflect the current realities of project development;³³ and (2) adopting a dedicated generator replacement study process outside of its new services interconnection process as other regional transmission operators, independent system operators, and transmission providers have done.³⁴

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 (2022), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

19. We find that NYISO's proposed revisions to its OATT and Services Tariff related to the retention, termination, and transfer of CRIS are just and reasonable and are accepted effective July 3, 2023, as requested. NYISO's proposal adds greater clarity and flexibility regarding the rules applicable to CRIS transfers and bolsters the existing CRIS retention and termination rules. We agree with NYISO that these revisions will help facilitate the full and efficient utilization of existing interconnection capacity by mitigating the retention of CRIS by suppliers who are not fully utilizing or who are unable to fully utilize their CRIS and by enabling the more efficient transfer of CRIS between facilities. This will also reduce the need for deliverability upgrades. We also agree that the proposal provides greater transparency and certainty of how resources are evaluated in deliverability analyses through new notification requirements. As a whole, the proposed revisions allow more flexibility as newer technologies come on to the system, which may better encourage efficient retirements and repowering of resources being replaced by newer technologies.

20. While commenters identify several additional areas of potential reform related to CRIS retention, termination, and transfer rules, they also support or do not oppose

³² *Id.* at 3.

³³ *Id.* at 5-7.

³⁴ *Id.* at 7-10.

NYISO's proposed changes. We find that these additional suggested areas of reform are beyond the scope of NYISO's proposal in this section 205 proceeding and are therefore dismissed.

The Commission orders:

NYISO's proposed revisions to its OATT and Services Tariff related to the retention, termination, and transfer of CRIS are hereby accepted, effective July 3, 2023, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.