UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER16-1404-000

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO") respectfully submits this answer to certain comments, and request for leave to answer and answer (collectively, "Answer") to certain protests concerning its April 13, 2016 compliance filing in this proceeding ("Compliance Filing"). The Compliance Filing was submitted in response to the Commission's October 9, 2015 order in Docket No. EL15-64-000 (the "October Order").[2] In the October Order the Commission directed the NYISO to revise the buyer-side capacity market power mitigation measures ("BSM Rules") set forth in its Market Administration and Control Area Services Tariff ("Services Tariff") to exempt certain narrowly defined intermittent renewable and self supply resources from Offer Floor[3] mitigation. The NYISO reiterates its support for the tariff revisions proposed in the Compliance Filing, including the 1000 MW Installed Capacity Class Year cap that is part of the Renewable Exemption, and the Net Short Threshold and Net Long Threshold that is part of the Self Supply Exemption.

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[1] 18 C.F.R. § 385.213.

[2] *New York Public Services Commission, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 (2015) ("October Order").

[3] Capitalized terms not defined in this Answer shall have the meaning set forth in the Services Tariff, including in the proposed revisions to those tariffs in the Compliance Filing, and the Open Access Transmission Tariff ("OATT").

This answer addresses certain arguments in the pleadings submitted by: (i) the New York State Public Service Commission, the New York Power Authority, and the New York State Energy Research and Development Authority ("PSC/NYPA/NYSERDA"),[4] (ii) the Independent Power Producers of New York, Inc. and Electric Power Supply Association (together "IPPNY");[5] (iii) Entergy Nuclear Power Marketing, LLC ("Entergy");[6] (iv) TDI USA Holding Corp. ("TDI");[7] (v) the New York Association of Public Power ("NYAPP");[8] and (vi) the Market Monitoring Unit.[9] As discussed in more detail below, the Commission should reject challenges to the Compliance Filing's proposed Renewable Exemption and Self Supply Exemption. The support for the proposed tariff revisions provided in the Compliance Filing has not been undermined by any of the challenges. Accordingly, both exemptions should be accepted as proposed except to the narrow extent specifically noted in Sections III.B.1 and III.B.2 below. The Commission should also reject PSC/NYPA/NYSERDA's proposal that entities be permitted to modify their Capacity Resource Interconnection Service ("CRIS") requests within a Class Year. Finally, the Commission should reject NYAPP's request for the appointment of a settlement judge or the use of technical conference procedures.

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[4] *Protest of the New York Public Service Commission, the New York Power Authority, and the New York State Energy Research and Development Authority to the New York Independent System Operator, Inc.'s Compliance Filing,* Docket No. ER16-1404-000 (May 31, 2016) ("PSC/NYPA/NYSERDA Protest").

[5] *Joint Protest of Independent Power Producers of New York, Inc. and Electric Power Supply Association,* Docket No. ER16-1404-000 (May 31, 2016) ("IPPNY Protest").

[6] *Motion To Intervene And Protest Of Entergy Nuclear Power Marketing, LLC,* Docket No. ER16-1404-000 (May 31, 2016) ("Entergy Protest").

[7] *Motion to Intervene, Request for Clarification, and Limited Protest of TDI USA Holdings Corp.,* Docket No. ER16-1404-000 (May 31, 2016) ("TDI Comments").

[8] *Protest of the New York Association for Public Power in Response to Compliance Filing,* Docket No. ER16-1404-000 (May 31,2015) ("NYAPP Protest").

[9] *Motion to Intervene and Comments of the New York ISO's Market Monitoring Unit,* Docket No. ER16-1404-000 (June 1, 2016) ("MMU Comments").

The NYISO has limited the scope of this Answer out of deference to the Commission's procedural rules and because it has previously requested that the Commission issue an order on the Compliance Filing promptly.[10] The NYISO's silence with respect to other assertions or characterizations made in filed comments and protests should not be construed as agreement with, or acquiescence to them. As noted, the NYISO does not support any changes to the tariff revisions proposed in the Compliance Filing except as explicitly stated in this Answer.

I. Communications

Communications and correspondence regarding this filing should be directed to:

Robert E. Fernandez, General Counsel
*Raymond Stalter, Director of Regulatory Affairs
*Gloria Kavanah, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, N.Y. 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
rstalter@nyiso.com
gkavanah@nyiso.com

*Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, D.C. 20037
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

* persons designated for service.[11]

[10] *See* Compliance Filing at 41. The NYISO had requested that the Commission issue an order no later than June 13, 2015 because certainty was needed months prior to the Class Year 2015 project determinations being issued. As discussed below in Section III.B.1, subsequent to the Compliance Filing the Class Year process has been delayed due to requests for additional System Deliverability Upgrade studies. Nevertheless, the NYISO continues to urge the Commission to act promptly, and no later than July 28, 2016**,** on the Compliance Filing so that the NYISO will have the certainty necessary to perform the analyses, obtain MMU comment, and make determinations pursuant to the BSM Rules prior to the commencement of the Initial Decision Period for Class Year 2015.

[11] The NYISO respectfully requests waiver of the requirements of Rule 18 C.F.R. § 385.203(b)(3) (2015) to permit service on more than two persons.

II. Request of Leave to Answer

Under Commission Rule 213(a)(3) the NYISO has a right to answer pleadings styled as "comments." In addition, the Commission has discretion to accept answers to protests when they are helpful to its decision-making process.[12] The NYISO has limited itself to answering points in pleadings that are styled as "protests," or comments that are styled as requests for "clarification" but which might be construed as protests,[13] where it is necessary to correct misstatements or otherwise clarify the record. The NYISO therefore respectfully requests that the Commission accept the answers to arguments raised by protestors that are included in Section III, below.

III. Answer

A. The Commission Should Accept the Compliance Filing's Proposed Renewable Exemption

The Compliance Filing's proposed 1,000 MW limit on Renewable Exemptions in each Class Year is reasonable. In their protests, both IPPNY and Entergy state that the Renewable Exemption as formulated in the Compliance Filing, and resulting entry, could dramatically decrease capacity prices.[14] Their statements, however, are premised on analyses which oversimplify the effect of several critical capacity market parameters, such as the Installed Reserve Margin and the Locational Minimum Installed Capacity Requirements. Indeed, the protest of the Market Monitoring Unit states that new "intermittent resources will raise the ICAP

[12] *See, e.g., New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record. . . .")

[13] TDI Comments at 4-7.

[14] *See* IPPNY Protest at 10, Affidavit of Mark D. Younger at P 10; Entergy Protest at 6.

requirement".[15] The New York State Reliability Council ("NYSRC") reports the same result in its Technical Study Report which it uses when it sets the Installed Reserve Margin.[16] The Installed Reserve Margin is used by the NYISO to establish the installed capacity requirements. Absent from the IPPNY and Entergy protests is a recognition that any increase in the installed capacity requirements due to the entry of new intermittent resources would tend to offset the price suppression effects of the resources. Thus the scenarios that result from the analyses relied upon by IPPNY and Entergy are not certain to even occur and, therefore, do not support their assertion.

B. The Commission Should Accept the Compliance Filing's Proposed Self Supply Exemption With the Two Limited Exceptions Discussed Herein

1. Deadline for Class Year 2015 Self Supply Exemption Requests

TDI requests that the proposed deadline by which the NYISO must receive Self Supply Exemption requests from Class Year 2015 Examined Facilities should be changed from April 28, 2016 to September 30, 2016.[17] TDI argues that this deadline was unreasonable and should be

[15] *See* MMU Comments at n. 5 ("[o]ver time, the introduction of large quantities of intermittent resources will raise the ICAP requirement while leaving the UCAP requirement relatively unaffected because of the interaction of the following two processes. First, the UCAP requirement is equal to the ICAP requirement times (1 minus the Derating Factor) where the Derating Factor is (1 minus the weighted-average of the UCAP-to-ICAP ratio of all resources). Thus, adding low UCAP-to-ICAP ratio resources such as wind turbines causes the UCAP requirement to fall relative to the ICAP requirement. Second, when the New York State Reliability Council sets the ICAP requirements, it takes into consideration the low capacity value of intermittent renewable resources, so this causes the ICAP requirement to rise.")

[16] The Technical Study Report for the 2016-2017 Capability Year includes a sensitivity analysis that shows that if all wind capacity were removed from the NYCA, then the IRM would decrease by 3.6 percent. *See Technical Study Report, New York Control Area Installed Capacity Requirement for the Period May 2016 to April 2017,* NYSRC Installed Capacity Subcommittee, December 4, 2015) at Table 7-1, p 24, available at: <http://www.nysrc.org/pdf/Reports/2016%20IRM%20Tech%20Study%20Report%20Final%2012-15-15.pdf>. The Technical Study Report prepared for the preceding two Capability Years show the same result. The NYSRC Installed Capacity Subcommittee's Technical Study Report for the two preceding Capability Years show similar results.

[17] *See* TDI Protest at 11.

extended, in part because the Initial Decision Period will commence later than was expected when the Compliance Filing was made.

The NYISO disagrees that its proposed deadline was unreasonable. However, because the start of the Class Year 2015 Initial Decision Period has been delayed due to Class Year member elections to pursue additional System Deliverability Upgrade studies, the NYISO does not oppose a commensurate extension of the application deadline to July 29 as described below. However, TDI's requested September 30 deadline is not reasonable.

The NYISO spent months after the issuance of the October Order extensively discussing its proposal and sharing detailed drafts of tariff revisions with stakeholders. It was clear throughout the stakeholder process that Class Year 2015 Examined Facilities would need to act promptly if they wished to pursue a Self Supply Exemption. The nature, scope, and core concepts of the Self Supply Exemption were settled well before the Compliance Filing was submitted.

Allowing Examined Facilities 15 days from the date of the filing to evaluate and make decisions based on final Self Supply Exemption tariff language was reasonable. As explained in the Compliance Filing, and acknowledged by TDI, the October Order required the NYISO to make the Self Supply Exemption available to SSE Applicants that are members of Class Year 2015. Proposed Services Tariff Section 23.4.5.7.12.1.1 establishes a transition provision for Class Year 2015 members because that Class Year was already in progress and the Initial Decision Period was expected to commence in August 2016.[18] The deadline to receive

[18] In addition to TDI and other stakeholders being made aware of the deadline during the stakeholder process in which the compliance tariff revisions were presented, subsequent to the Compliance Filing, the NYISO issued a notice to Class Year 2015 Examined Facilities and to its Installed Capacity Working Group and Business Issues Committee informing them of the deadline by which requests by Class Year 2015 Examined Facilities for a Self Supply Exemption must be received. The NYISO did not receive any such requests.

completed Self Supply Exemption applications from Class Year 2015 Examined Facilities is necessary for the NYISO to be able to complete its analysis including obtaining Market Monitoring Unit comment prior to the Initial Decision Period.[19]

Subsequent to the submission of the Compliance Filing, some members of Class Year 2015 requested additional System Deliverability Upgrade studies which resulted in the NYISO informing stakeholders at its Transmission Planning Advisory Subcommittee that the Initial Decision Period is now expected to be October/November 2016 (*i.e.*, when the NYISO presents the Project Cost Allocations to the Operating Committee.) Accordingly, the NYISO believes it would be reasonable for Services Tariff Section 23.4.5.7.12.1.1 to be revised to change the application deadline to July 29, 2016 provided that the Compliance Filing's proposed tariff revisions are accepted as proposed. As with the deadline proposed in the Compliance Filing, the revised July 29 deadline is based on the NYISO's estimate of the amount of time it will need to evaluate the information provided with a request for a Self Supply Exemption as proposed in the Compliance Filing (including obtaining comment from the Market Monitoring Unit.)

TDI's proposed September 30, 2016 deadline is unreasonable and should be rejected. It does not account for the time the NYISO needs to make the BSM Rule Class Year determinations not only for the SSE Applicant but for other Examined Facilities, because the determinations for them are affected by the determination for the SSE Applicant. It also creates a substantial risk of disrupting and delaying many Class Year processes and decisions. The Class Year rules in the OATT establish specific and closely interrelated timetables governing various NYISO determinations that materially impact Market Participants' and Developers' investment decisions. Fifteen members of Class Year 2015 are currently awaiting their Project

[19] *See* proposed Services Tariff Section 23.4.5.7.14.4.1(a).

Cost Allocations. Of those members, six are in a Mitigated Capacity Zone and thus are awaiting their BSM Rule determinations of an exemption or Offer Floor. Because BSM Rule determinations utilize forecasts that account for the other members of the Class Year, the rules provide for all determinations to be issued concurrently. The OATT also provides that the next Class Year Start Date cannot be until after the Initial Decision Period of the current Class Year.[20]

Thus, delaying the Class Year process, even if permissible under the OATT, would impede and complicate the investment decisions of the Class Year 2015 members, proposed projects in the Interconnection Queue that are eligible to enter the next Class Year, as well as the investment decision of existing resources that take into consideration the actions of projects in the Class Year and their BSM determinations. By contrast, the NYISO's proposed July 29 deadline would not create these difficulties.

2. Transition Provision for Class Year 2015 Members that Requested a Competitive Entry Exemption

TDI asserts that it is seeking clarification of an existing Services Tariff provision establishing that an Examined Facility[21] that requested a Competitive Entry Exemption and withdraws it will receive the Mitigation Net CONE Offer Floor.[22] TDI "requests clarification" that it may withdraw its application for a Competitive Entry Exemption and enter into a direct or indirect contract with a load-serving entity that could qualify for a Self Supply Exemption, without subjecting [its project] to mitigation pursuant to Section 23.4.5.7.9.3.3 of the Tariff."[23]

[20] *See* OATT Section 25.5.9.

[21] The Services Tariff provision discussed in this section applies to both Examined Facilities and NCZ Examined Projects. Class Year 2015 only applies to Examined Facilities. For ease of reference, and as with the Compliance Filing transmittal letter, references in this Answer to Examined Facilities also mean NCZ Examined Projects except for Class Year 2015 because there are no NCZ Examined Projects.

[22] *See* TDI Protest at 5.

[23] TDI Limited Protest at 5 (footnote omitted).

In reality, TDI's request is tantamount to asking for a generally applicable modification of the Compliance Filing's proposed new Services Tariff Section 23.4.5.7.14.1.1(a) which establishes that an SSE Applicant that requests a Self Supply Exemption in a given Class Year may not also request a Competitive Entry Exemption in the same Class Year.[24] No party protested that limitation, and no party other than TDI commented on it. For the reasons set forth in the Compliance Filing,[25] and as discussed extensively during the stakeholder process, that provision should not be altered.

There is no "conflict" between the two tariff provisions. Seeking both a Competitive Entry Exemption and a Self Supply Exemption in the same Class Year is, and should be, prohibited. "Clarification" that an applicant may request a Competitive Entry Exemption only to later withdraw it and seek a Self Supply Exemption is not needed and, in fact, could only serve to undermine the express prohibition.

Thus, the NYISO opposes TDI's requested clarification as a general matter. The NYISO does acknowledge that as of the deadline by which Class Year 2015 members had to request a Competitive Entry Exemption, the complaint that prompted the creation of a Self Supply Exemption had not yet been filed. TDI thus did not have the option of choosing to request a Self Supply Exemption rather than a Competitive Entry Exemption at that time.[26] The October Order

[24] *See* proposed Services Tariff Section 23.4.5.7.14.1.1(a) ("An Examined Facility or an NCZ Examined Project that is a member of a Class Year may not request a Self Supply Exemption in the same Class Year that it requests a Competitive Entry Exemption, and an Examined Facility or an NCZ Examined Project that is the expected transferee of CRIS being considered with a Class Year may not request a Self Supply Exemption in respect of the same Class Year that it requests a Competitive Entry Exemption.")

[25] *See* Compliance Filing at 21.

[26] TDI Limited Protest at 4, 5-9. The NYISO notes that TDI's Examined Facility, the Champlain Hudson Power Express, is the only Class Year 2015 Examined Facility that requested a Competitive Entry Exemption. Therefore, it is the only entity that might possibly avail itself of this provision.

established and effective date for the compliance tariff revisions.[27] Therefore, the Compliance Filing proposes that the Self Supply Exemption be available to Class Year 2015 Examined Facilities.[28]

The NYISO would not oppose revising proposed Services Tariff Section 23.4.5.7.13.1.1 to include a narrow transition rule so that an Examined Facility in Class Year 2015 that initially requested a Competitive Entry Exemption would have a one-time option by a prescribed deadline (*i.e.*, if the Commission accepts the NYISO's proposal as indicated in Section III.B.1 above, July 29, 2016) to withdraw its request for a Competitive Entry Exemption without automatically receiving the Mitigation Net CONE Offer Floor (pursuant to Services Tariff Section 23.4.5.7.9.3.3) contingent upon the NYISO concurrently receiving a request for a Self Supply Exemption in accordance with the requirements set forth in the Compliance Filing. The NYISO strongly opposes providing TDI[29] an option to withdraw its request for a Competitive Entry Exemption and not automatically receive the Mitigation Net CONE Offer Floor without concurrently requesting a Self Supply Exemption in Class Year 2015 wholly in accordance with the application requirements. Creating a broad exception such as the one proposed by TDI would also allow TDI to unreasonably escape consequences that it had every reason to be well aware of at the time it requested a Competitive Entry Exemption. This limited modification to the Compliance Filing would be a one-time Class Year 2015 transition provision only, and would not otherwise alter the Compliance Filing's prohibition on an Examined Facility requesting a Competitive Entry Exemption and a Self Supply Exemption in the same Class Year.

[27] October Order at P 10.

[28] *See, e.g.*, Compliance Filing at 24. (There are no Class Year 2015 Examined Facilities that meet the eligibility criteria for a Renewable Exemption.)

[29] There are no other similarly situated developers, nor can any exist in the future.

The NYISO also notes that the Compliance Filing is clear that if an Examined Facility requests a Self Supply Exemption in a Class Year, and to the extent permissible under Attachment S of the OATT, enters a subsequent Class Year in which it requests CRIS, it can pursue a different exemption or simply be found not to be uneconomic under the "Part A" and "Part B" test, for the CRIS it requests. The NYISO cautions, however, that TDI's overbroad claim that there is "no compelling reason to deny a project the full range of potential exemptions when it enters a subsequent Class Year"[30] should be rejected. The BSM Rules are critically important because they are designed to prevent the artificial suppression of capacity prices and are carefully drafted to be very precise in their scope and effects. The Commission should avoid endorsing TDI's broad statement because such an endorsement could readily be taken out of context and misapplied in unpredictable ways in the future.

3. Expansion of Self Supply Exemption to UDR Projects with a Generator and with a Self Supply LSE

The Compliance Filing contains provisions that permit a Unforced Capacity Deliverability Rights ("UDR") project to be eligible for a Self Supply Exemption.[31] TDI seeks to expand the proposed exemption to encompass Examined Facilities that are "UDR Projects may have an indirect contractual relationship with a [Self Supply] LSE."[32] TDI's proposed change was not put forward by TDI or any other stakeholder during the lengthy stakeholder process through which the NYISO developed the Compliance Filing. The Compliance Filing delineated the requirements that third party contractual relationships must meet. Its proposed Certifications and Acknowledgements buttress that requirement.

[30] TDI Limited Protest at 9.

[31] *See, e.g.*, proposed Services Tariff Sections 23.4.5.7.14.1(b)(1) and 23.4.5.7.14.3.

[32] TDI Limited Protest at 12.

The NYISO is open to considering the expansion of the exemption to accommodate an additional structure. However, this consideration would require first identifying and defining the potential attributes and details of the structure; then determining if an exemption is appropriate for it, and then determining the rules needed to accommodate it. Each of these steps would be complex. For example, if an exemption involving an "indirect contractual relationship" were appropriate in certain circumstances, the Net Short Threshold and Net Long Threshold tests would need to consider the load and supply of three entities and each of their affiliate relationships. Further, there might need to be different rules established if the UDR project has a terminus in an unconstrained region of the NYCA (*i.e.*, in Rest of State, not in a Locality) versus in an External Control Area. The NYISO would need to fully consider the implications of another party's direct participation in and support of the arrangement that forms the basis of the exemption, and the rule design that may be necessary to protect the market.

Due to the complexity of consideration and any rules needed to implement TDI's generally described proposal, the NYISO would require adequate time. Further, parties would need an opportunity to consider them and to raise any concerns before the Commission. Even assuming the most aggressive possible schedule, the rules could not be established in time for the Class Year 2015 Initial Decision Period, taking into consideration the current Class Year schedule estimate which anticipates the Class Year 2015 Study going to the Operating Committee for approval in the October/November 2016 timeframe with such approval resulting in the commencement of the Initial Decision Period. The NYISO describes above in Section III.B.1 that it would need to receive all applications by July 29, 2016 under the rules as proposed. It would not be realistic to think that the NYISO could identify and evaluate the details, and develop proposed rules to address this newly raised scenario, and secure Commission acceptance

of them by July 29. Moreover, as discussed above, BSM Rule determination for Examined Facilities are made concurrently. Therefore, the outcome of a determination based on a request for a Self Supply Exemption can reasonably be expected to alter the determinations for other Examined Facilities in the Class Year. Thus, a future order that did not adopt a later effective date would alter not only the BSM Rule determinations for other Examined Facilities but would also affect developers that accepted or rejected their Class Year Project Cost Allocations based on information that was available at that time.

Consequently, if the Commission finds that it is appropriate for the NYISO and its stakeholders to consider expanding the Self Supply Exemption to accommodate an additional scenario as suggested by TDI, it would be most efficient for the NYISO to undertake that consideration and development of any such additional rules (if appropriate) after the Commission accepts the Compliance Filing. That is, the Commission should not delay ruling on the Compliance Filing (for which the October Order established an effective date of October 9, 2015.) Any such expanded rules, if appropriate, should have their own, later, effective date. Because TDI's proposal was made so late, consideration of it should not delay the applicability of the rules proposed in the Compliance Filing. Most importantly, TDI's proposal should not be permitted to disrupt or otherwise delay Class Year 2015.[33]

For these reasons, the Commission should not delay acceptance of the proposed Compliance Filing, and should provide the NYISO with a subsequent opportunity to evaluate whether suitable rules can be developed and if so, propose such rules, to accommodate Examined

[33] The NYISO also notes that TD has an additional Interconnection Queue position its proposed UDR project, Interconnection Queue position #458; *i.e.,* besides the Interconnection Queue position (#305) that is in Class Year 2015.

Facilities that are UDR projects with an indirect contractual relationship with a Self Supply LSE. However, any such rules should have their own, later effective date.

4. The Self Supply Exemption Rules Account for Additional CRIS MW

IPPNY asserts that the Compliance Filing Self Supply Exemption does not propose a methodology to calculate costs and revenues associated with existing resources that seek Additional CRIS. It therefore claims that the proposal is incomplete and should be rejected until it is fully vetted through the stakeholder process.[34] In reality, the proposed Net Short Threshold provides a methodology that is appropriate and effective to calculate the Proportional Entry Costs (based on the Unit Net CONE for Additional CRIS) and other necessary elements that are utilized to determine whether the Examined Facility passes the Net Short Threshold. The Additional CRIS rules to calculate Unit Net CONE[35] continue to be suitable for use when determining the Net Short Threshold in the Self Supply Exemption. IPPNY has not demonstrated to the contrary. Therefore, there is no need for a further stakeholder process to vet the issue.

C. The Exemptions Should be Available to Additional CRIS MW Requests

Entergy protests the Compliance Filing's application of the Renewable Exemption and Self Supply Exemption to Additional CRIS MW.[36] It asserts that it is beyond the scope of the October Order to make these exemptions available to requests for Additional CRIS MW because they are existing resources. Entergy's objections are unfounded. Additional CRIS MW are new

[34] *See* IPPNY Protest at 14.

[35] *See* Services Tariff Sections 23.4.5.7.6.1 – 23.4.5.7.6.3. Those rules were developed in the NYISO's stakeholder process, and were unopposed at the Commission. *See* New York Independent System Operator, Inc., *Compliance Filing, Request for Commission Action by May 14, 2015, and Request for Limited Waiver*, Docket No. ER15-1498-000 at 2; *New York Independent System Operator, Inc*. Delegated Letter Order, Docket No. ER15-1281-000 (May 6, 2015).

[36] Entergy Protest at 2, 11-13.

entrants into the capacity market[37] and thus are subject to the BSM Rules. Requests for Additional CRIS MW are evaluated in the Class Year process and under the BSM Rules along with proposed new Generators and UDR projects, all of which are Examined Facilities.[38] The October Order found that the "existing [BSM Rules] are in select cases unnecessarily applied to certain renewable resources and self-supply resources, and thus, can result in the unnecessary mitigation of resources that derive limited or no benefit from lower prices."[39] Its directive was to address unnecessary mitigation through the application of the current BSM Rules and was not limited to "new" construction. Thus, because the BSM Rules apply to Additional CRIS MW,[40] the exemption should also be available.

Entergy's attempt to draw a parallel with and rely on the Commission's ruling on Competitive Entry Exemption is inapt. The Additional CRIS rules had not yet been filed by the NYISO, let alone accepted by the Commission, when it issued its Competitive Entry Exemption Order. Thus, the Commission held that it was beyond the scope of that proceeding.[41] The Additional CRIS rules were accepted by the Commission and effective when the Complaint that led to the October Order was filed in this proceeding (and thus also when the Commission issued the October Order.) In addition, the NYISO did discuss the application of the proposed rules to all Examined Facilities, including Additional CRIS MW, during the stakeholder process through

[37] *See* Services Tariff Section 23.2.1 at definition of Additional CRIS MW.

[38] *See* Services Tariff Section 23.4.5.7.3 23.4.5.7.6.

[39] October Order at P 10.

[40] *See* Services Tariff Section 23.4.5.7.6.

[41] *See Consol. Edison Co. of N.Y., Inc. v. New York Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,110 (2015) at P 71("[w]e find that the applicability of the competitive entry exemption to Additional CRIS MWs is beyond the scope of this proceeding, which is limited to the consideration of whether NYISO has complied with the directives in the Complaint Order.")

which it developed the Compliance Filing. For these reasons, Entergy's request to limit the availability of the Renewable Exemption and Self Supply Exemption should be rejected.

D. The Commission Should Reject the PSC/NYPA/NYSERDA Proposal that Market Participants Be Permitted to Adjust their Capacity Resource Interconnection Service Requests Within a Class Year

PSC/NYPA/NYSERDA argue that "parties should be afforded an opportunity to adjust their Capacity Resource Interconnection Service ("CRIS") requests in the [Class Year] Process to avoid mitigation of MWs . . . ."[42] They suggest that the only reason that the NYISO declined to allow such adjustments was a concern that adding such a process would be outside the scope of this compliance proceeding.

The PSC/NYPANYSERDA proposal should be rejected. As discussed above in Sections III.B.1 - III.B.3, the NYISO's administration of the BSM Rules is closely aligned with the procedures governing the determination of project cost allocations for new interconnection facilities. The hallmark of the Class Year Study process is that it is performed for a group of projects that have achieved similar developmental milestones to determine their cumulative impact. Through this unique clustered study, the NYISO is able to equitably allocate upgrade costs and generate detailed good faith cost estimates that provide reasonable closure on upgrade costs. As part of the cost allocation process, the NYISO performs a number of studies and, upon completing them, provides each developer in a given Class Year with its initial cost allocation. If any developer rejects its cost allocation, the NYISO restudies the remaining projects in a subsequent round to re-determine the cost allocations. The process is iterative and continues until all Developers in the Class Year either accept their deliverable CRIS MW, or respective

[42] PSC/NYPA/NYSERDA Protest at 7, 12-13.

cost allocations and post adequate security, or withdraw from the Class Year.[43] Both the BSM Rule determinations and project cost allocation determinations materially impact the interests of all members of the Class Year and Market Participants.

Permitting adjustments to CRIS Requests outside the bounds of the established interconnection process could disrupt and delay that process in ways that could negatively impact all members of a given Class Year. It could also create uncertainty for and upset the expectations of other entities that are seeking exemptions under the BSM Rules, or whose interests are affected by NYISO exemption determinations. Consequently, the Commission should reject PSC/NYPA/NYSERDA's request to allow for these adjustments which have the potential to disrupt and delay the administration of both the BSM Rules and the interconnection cost allocation procedures.[44]

E. The Compliance Filing's Revocation Provisions are Reasonable, Appropriate, and Necessary

PSC/NYPA/NYSERDA claim that the revocation provisions proposed by the NYISO for both the Self Supply Exemption and Renewable Exemption are inappropriate.[45] Their position is based on their incorrect characterization of the NYISO's proposal. The Self Supply Exemption and Renewable Exemption revocation provisions are reasonable, appropriate, and necessary in specified circumstances. For example, a Renewable Exemption should be revoked if an applicant no longer satisfies the criteria that formed the basis of the determination that it had limited or no ability to suppress prices. Revocation in these circumstances is necessary in order

[43] *See, e.g.*, Services Tariff Sections 23.4.5.7.3.2 - 23.4.5.7.3.3.

[44] The PSC/NYPA/NYSERDA proposal is also well outside the scope of this proceeding. Moreover, should they wish to pursue such an adjustment to the OATT Class Year rules, they should pursue it in the NYISO's shared governance stakeholder process.

[45] PSC/NYPA/NYSERDA Protest at 7, 8-12.

to ensure that the proposed exemptions do not result in under-mitigation of resources that have an ability or incentive to suppress prices.

Contrary to PSC/NYPA/NYSERDA's position, if a Renewable Exemption Applicant is modified and no longer is an Intermittent Power Resource, it should not be able to retain its exemption. The premise of the Renewable Exemption is that it is only available to those Examined Facilities which have been demonstrated to have limited or no incentive or ability to suppress prices. It would be unreasonable for the NYISO to exempt a project based on specific characteristics which are later modified such that the project no longer has the characteristics on which the exemption was based.

Another aspect of PSC/NYPA/ NYSERDA's objection is grounded on the incorrect premise that if a SSE Applicant's Load changes after it has been granted a Self Supply Exemption, and as a result no longer satisfies the Net Short Threshold and/or Net Long Threshold, it would have its exemption revoked by the NYISO. They state that because the Services Tariff, as proposed, does not include a Section 23.4.5.7.14.1(b), the NYISO's revocation clause in Section 23.4.5.7.14.5(a) must be intended to refer to Section 23.4.5.7.14.3.[46] This is not the case. The reference in question does contain a typographical error, but as corrected it would refer to Services Tariff Section 23.4.5.7.14.1.1(b).[47] In addition, and as set

[46] PSC/NYPA/NYSERDA Protest at 8-9.

[47] The NYISO also notes that there are two additional typographical errors in that section, neither of which alter the obviously intended meaning but both of which should be corrected to avoid any possible lack of clarity. First, the comma that is placed before "Energy" in the first sentence should be after the word "Energy". Next, the second appearance of the word "other" should be replaced with "the". Therefore, the blackline of the sentence would read: (a) If, at the time prior to the SSE Applicant first producing or transmitting~~,~~ Energy**,** it or the Self Supply LSE no longer satisfies the requirements of Section 23.4.5.7.14.1**.1**(b) **or 23.4.5.7.14.2(e),** or no longer meets the requirements of the Acknowledgement and Certification, the SSE Applicant and the Self Supply LSE shall notify each other and ~~other~~ **the** ISO in writing within 3 business days of the event or basis for the failure to meet the requirements for a Self Supply Exemption. Upon notification, the ISO shall revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it

forth in the transmittal letter, it also should refer to Section 23.4.5.7.14.2(e).[48] These two provisions discuss, respectively, the ownership and Long Term Contract requirements for Self Supply Exemption eligibility, and the Certification and Acknowledgement requirements. No party has claimed that it is unreasonable or inappropriate for the Self Supply Exemption to be revoked if at any time prior to the SSE Applicant first producing or transmitting Energy it ceases to be owned by or under contract with the Self Supply LSE, or if it no longer has a contract, agreement, arrangement, or relationship for payments related to the SSE Applicant's construction or participation on the ICAP market.

F. The Commission Should Not Appoint a Settlement Judge or Initiate a Technical Conference in this Proceeding

NYAPP asks that the Commission "provide for the appointment of a settlement judge to assist in proceedings at the Commission." It also states that "[t]echnical conferences on certain issues may also be useful in the timely development of a NYISO proposal . . ."[49]

There is no reason to initiate settlement judge or technical conference processes in this proceeding. NYAPP has offered no explanation of why or how such processes would lead to a more "timely" resolution of the issues in this proceeding or would otherwise be helpful. The NYISO respectfully submits that they would not be. If the Commission were to conclude that the Compliance Filing's exemptions should be modified then it should give the NYISO additional specific guidance and require a further compliance filing reflecting those directions. The process used to develop the Compliance Filing allowed for the development of a proposal

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first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of this Services Tariff.)

[48] Compliance Filing at 38.

[49] NYAPP Protest at 18. *See also Comments of the American Public Power Association* (Docket No. ER16-1404-000 at 2.

with significant stakeholder input and facilitated the NYISO's and stakeholders' understanding of the issues and implications. Settlement judge or technical conference procedures would necessarily take longer because of the need for a settlement judge to gain the same familiarity with the complex issues and complexity involving the ISO-Administered Market that are implicated by this proceeding, and the need to prepare technical conference testimony. Such delays would be problematic given the NYISO's and stakeholders' need for certainty for all investment decisions. It would also be more expensive and disruptive to require issues that can be resolved through the normal stakeholder process in New York State to instead be discussed in Washington, D.C.

NYAPP has not identified disputed issues of material fact, or any concerns regarding the credibility of witnesses, that are normally required to trigger the use of hearing and settlement judge procedures.[50] The Commission should therefore resolve any remaining concerns based on written filings and pleadings just as it has done in other recent proceedings concerning capacity market design and capacity market power mitigation.[51]

[50] *See Blumenthal v. FERC*, 613 F.3d 1142, 1144 (D.C. Cir. 2010) (stating that FERC's choice to hold an evidentiary hearing is discretionary); *Cal. ex rel. Lockyer v. FERC*, 329 F.3d 700, 708-09 (9th Cir. 2003) ("Even when there are disputed factual issues, FERC does not need to conduct an evidentiary hearing if it can adequately resolve the issues on a written record" *citing Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 369-70 (D.C.Cir. 2002)); *see also Blumenthal* at 1145.

[51] *See, e.g., PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015); 155 FERC ¶ 61,157 (2016) (accepting complex package of controversial rules governing "Capacity Performance Resources" based on the written record without resorting to other procedures).

IV. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission accept its answer addressing the issues specified above and accept the pending compliance tariff revisions proposed in the Compliance Filing with the limited exceptions noted above.

Respectfully submitted,

/s/ Gloria Kavanah

Gloria Kavanah
Counsel for the New York Independent System Operator, Inc.

June 13, 2016

cc: Michael Bardee
Anna Cochrane
Kurt Longo
Max Minzner
Daniel Nowak
Larry Parkinson
J. Arnold Quinn
Douglas Roe
Kathleen Schnorf
Jamie Simler
Gary Will

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 13th day of June 2016.

/s/ Joy A. Zimberlin

Joy A. Zimberlin
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-6207