UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Reform of Generator Interconnection Procedures and Agreements	**)** **)**	**Docket No. RM17-8-00_**

REQUEST FOR CLARIFICATION AND ALTERNATIVE REQUEST FOR REHEARING OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Section 313(a) of the Federal Power Act[1] and Rules 713 and 2007 of the Commission's Rules of Practice and Procedure,[2] the New York Independent System Operator, Inc. ("NYISO") requests clarification, and in the alternative rehearing, of one matter in the Commission's April 19, 2018, Final Rule on *Reform of Generator Interconnection Procedures and Agreements* in the above-captioned proceeding ("Final Rule").[3] The Final Rule adopted ten reforms, including requiring public utility transmission providers to create a process for interconnection customers to use surplus interconnection service at existing points of interconnection. As discussed below, the NYISO respectfully seeks clarification, or in the alternative rehearing, that the Final Rule does not limit the manner in which the NYISO demonstrates independent entity variations in compliance with the Final Rule's surplus interconnection service requirements.

I. COMMUNICATIONS

Communications and correspondence regarding this pleading should be directed to:

Robert E. Fernandez, General Counsel	*Ted J. Murphy[4]
Karen Georgenson Gach, Deputy General Counsel	Hunton Andrews Kurth LLP

[1] 16 U.S.C. § 825l(a).

[2] 18 C.F.R. §§ 385.713, 385.2007.

[3] *Reform of Generator Interconnection Procedures and Agreements*, Final Rule, 163 FERC ¶ 61,043 (2018) ("Final Rule").

[4] Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2018)) is requested to the extent necessary to permit service on counsel for the NYISO in Rensselaer, NY and Washington, D.C.

Raymond Stalter, Director Regulatory Affairs
*Sara B. Keegan, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
skeegan@nyiso.com

2200 Pennsylvania Avenue, NW
Washington, D.C. 20037
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@huntonAK.com

*Michael J. Messonnier Jr.
Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 344-7999
mmessonnier@huntonAK.com

* Persons designated for service.

II. BACKGROUND

A. The Final Rule's Surplus Interconnection Requirements and Independent Entity Variations

On April 19, 2018, the Commission issued the Final Rule, which established ten reforms to its *pro forma* Large Generator Interconnection Procedures ("LGIP") and *pro forma* Large Generator Interconnection Agreement ("LGIA").[5] The Final Rule directed public utility transmission providers to adopt its requirements as revisions to the LGIP and LGIA in their Open Access Transmission Tariffs.[6] Consistent with all prior Commission rulemakings revising *pro forma* interconnection standards, the Final Rule provided that Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs") could seek independent entity variations under the standard initially established by Order No. 2003.[7] Specifically, in Order No. 2003 and in subsequent interconnection rules, the Commission has acknowledged the differing characteristics of ISO/RTO regions and consistently provided each ISO/RTO with broad

[5] Capitalized terms not defined herein have the meaning set forth in the NYISO's Open Access Transmission Tariff ("OATT") and if not defined therein, then as defined in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

[6] Final Rule at P 555.

[7] *Id*. at P 43.

flexibility to seek independent entity variations "to customize its interconnection procedures and agreements to fit regional needs."[8] Due to ISO/RTOs' independence, the independent entity standard "is more flexible than the 'consistent with or superior to' standard and the regional differences standard."[9] The Commission has recognized that "[a]lthough there are some common issues affecting all the regions, there are also significant differences in the nature and scope of the problem from region to region; there may, therefore, be no one right answer … ."[10] The Commission has traditionally indicated that it "will review the proposed [independent entity] variations to ensure they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable,"[11] accepting such modifications where the changes are clarifying and/or ministerial in nature and/or the entity requesting the variation has supplied sufficient justification.[12]

The Final Rule further provided that to the extent it revised ISO/RTO LGIP and LGIA provisions that had been previously accepted as independent entity variations, ISOs/RTOs could demonstrate that previously-approved variations should remain in effect.[13]

Among the reforms adopted in the Final Rule, the Commission directed public utility transmission providers to revise their LGIPs and LGIAs to establish a process for interconnection customers to use surplus interconnection service.[14] This reform is premised on

[8] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. 31,146 at P 827 (2003) ("Order No. 2003"), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. 131,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Com'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[9] Order No. 2003 at P 26.

[10] *Interconnection Queuing Practices, Order on Technical Conference*, 122 FERC ¶ 61,252 (March 20, 2008) at P 8.

[11] *New York Independent System Operator, Inc*., 124 FERC ¶ 61,238 at P 17 (2008).

[12] *Id.* at P 18.

[13] *Id.* at P 556.

[14] *Id.* at P 467.

the Commission's determination that surplus interconnection service is created because generating facilities may not operate at full capacity at all times, but are evaluated in interconnection studies at their full capacity. The Commission believes that it would be unjust and unreasonable to prevent interconnected facilities from utilizing the "remaining, unused interconnection service."[15]

As the Commission recognized,[16] several commenters opposed the surplus interconnection service requirements, and some stated that there is no surplus on their systems in the sense contemplated by the Final Rule.[17] The Commission expressly acknowledged that there is "substantial regional variation in the potential availability of surplus interconnection service and existing or prospective processes that would facilitate its use."[18] It is because such regional variations exist that the Commission has permitted ISO/RTOs to seek independent entity variations that address Commission policy objectives within each region's unique interconnection framework. Accordingly, the Commission provided that a public utility transmission provider could explain in its compliance filing that it already complied with the surplus interconnection service requirements in the Final Rule.[19]

> [W]e note that a number of commenters seek regional flexibility in complying with the rule to accommodate regional needs. In Order No. 2003, the Commission stated that if, on compliance, a non-RTO/ISO transmission provider

[15] *Id.* at P 468.

[16] *Id.* at P 466.

[17] California Independent System Operator Corporation, for example, stated that there is no surplus service in its region. *See Comments of California Independent System Operator Corporation*, Docket No. RM17-8-000, at 31-32 (April 13, 2017) (explaining that "the only interconnection capacity that has already been studied is the interconnection capacity existing generators are using or interconnection customers in queue that have completed their Phase I and Phase II interconnection studies contemplate using. Thus there is not additional interconnection capacity or 'headroom'." Similarly, PJM Interconnection L.L.C. explained that "PJM would have to define 'energy rights' and add a process that parallels the [Capacity Interconnection Rights] process" to accommodate this rule. *See Comments of PJM Interconnection, L.L.C.*, Docket No. RM17-8-000, at P 27 (April 13, 2017). *See also Comments of ISO New England Inc.*, Docket No. RM17-8-000, at 47 (April 13, 2017) (opposing this requirement since "implementation of the design proposed in the NOPR would significantly disrupt or misalign those existing mechanisms.")

[18] *Id.* at P 476.

[19] *Id.* at P 476.

> 'offers a variation from the Final Rule LGIP and Final Rule LGIA and the variation is in response to established . . . reliability requirements, then it may seek to justify its variation using the regional difference rationale." … The Commission went on to say that, for RTOs/ISOs, it would allow independent entity variations for pricing and non-pricing provisions, and that RTOs/ISOs "shall have greater flexibility to customize [their] interconnection procedures and agreements to fit regional needs." In this Final Rule, we make no changes to the variations allowed by Order No. 2003. Therefore, on compliance, transmission providers may argue that they qualify for the above-mentioned variations from the requirements of this Final Rule.[20]

However, Paragraph 477 of the Final Rule stated that in order for an ISO/RTO's process to qualify for an independent entity variation from the surplus interconnection service requirements, the ISO/RTO:

> must demonstrate, at a minimum, that its tariff: (1) includes a definition of surplus interconnection service consistent with the Final Rule; (2) provides an expedited interconnection process outside of the interconnection queue for surplus interconnection service, consistent with the Final Rule; (3) allows affiliates of the original interconnection customers to use surplus interconnection service for another interconnecting generating facility consistent with the Final Rule; (4) allows for the transfer of surplus interconnection service that the original interconnection customer or one of its affiliates does not intend to use; and (5) specifies what reliability-related studies and approvals are necessary to provide surplus interconnection service and to ensure the reliable use of surplus interconnection service.[21]

B. NYISO's Independent Entity Variations

The NYISO generally follows the Commission's *pro forma* LGIP and LGIA, but its Large Facility Interconnection Procedures ("LFIP") and LGIA have long included numerous independent entity variations. These Commission-accepted variations are specifically tailored to New York's unique circumstances. The existence of previously accepted variations has prompted the NYISO to obtain additional independent entity variations in response to prior modifications to the *pro forma* LGIP and LGIA such as those adopted in Order No. 845. All of

[20] *Id.* at P 43.
[21] Final Rule at P 477.

the NYISO's independent entity variations have been and continue to be necessary in order to make Commission revisions to the *pro forma* LFIP and LGIA consistent with NYISO's existing OATT and current practices.[22] Since Order No. 2003, the NYISO has continued to implement significant revisions to its interconnection process to update and enhance the New York specific interconnection requirements. These procedures do not exist in a vacuum, but are fundamentally integrated with the NYISO's market and planning rules.[23]

III. REQUEST FOR CLARIFICATION

The NYISO requests that the Commission clarify that it did not intend to limit the manner in which ISOs/RTOs demonstrate necessary independent entity variations regarding Surplus Interconnection Service. As discussed below, the NYISO's need for independent entity variations with respect to the surplus interconnection service requirements is especially acute and there is every reason to afford it broad flexibility in developing a compliance proposal. The Final Rule language quoted in Section II of this request clearly recognized the continued need to accommodate independent entity variations. But Paragraph 477 may be read as dictating highly prescriptive surplus interconnection service requirements that each ISO/RTO must include in its interconnection procedures. If read narrowly, these prescriptions would severely limit the scope of the independent entity variations that an ISO/RTO may propose. The NYISO does not interpret the Final Rule to be so limiting but seeks clarification out of an abundance of caution.

A. The Final Rule's Key Assumptions Concerning the Need for and Benefits of Surplus Interconnection Service Are Not Applicable to the NYISO

Establishing narrow prescriptions regarding ISO/RTO compliance with the surplus interconnection service requirements would be very problematic. The need for flexibility in

[22] *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,159 at P 17 (2004).

[23] *See, e.g., New York Independent System Operator, Inc.*, Interconnection Process Improvements, Docket No. ER18-80-000 (October 16, 2017) at pp. 30, 33-34, 70-71, 73, 84.

obtaining independent entity variations is particularly important in this instance because the rationale for the surplus interconnection service requirements is based upon the process described by the original Order No. 2003 *pro forma* language. However, the NYISO, through a series of FERC orders dating back approximately seventeen years, has established unique regional rules—and obtained independent entity variations consistent with those rules—that are fundamentally different than those that the Commission was addressing when it structured the surplus interconnection service requirement.

Specifically, the premise of the Final Rule's surplus interconnection service requirements is that Transmission Provider's interconnection studies assume that the generating facility being studied will operate at its full capacity. For example, in Paragraph 468 the Commission explains that "surplus interconnection service is created because generating facilities may not operate at full capacity at all times" and because "[c]onsistent with the requirements of Order No. 2003, transmission providers assume that each interconnection customer is fully utilizing its interconnection service when studying other requests for new interconnections."[24] Similarly, in Paragraph 469 the Commission states that "Order No. 2003 mandates that transmission providers assume that generating facilities operate at their full capacity." [25]

The Final Rule proceeds to cite the *pro forma* definition of Energy Resource Interconnection Service ("ERIS"), which it characterizes as requiring that "Interconnection Studies to be performed . . . would identify the Interconnection Facilities required as well as the Network Upgrades needed to allow the proposed Generating Facility to operate at *full output*" and "the *maximum allowed output* of the Generating Facility without Network Upgrades."[26]

[24] *Id.* at P 468.
[25] *Id.* at P 469
[26] *Id.* (citing Order No. 2003 at P 753).

Under the NYISO's Commission-approved variation of the definition of ERIS, however, this is not the case.

The *pro forma* definition of ERIS refers to eligibility to deliver the facility's output:

> Energy Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System ***to be eligible to deliver the Generating Facility's electric output*** using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.[27]

By contrast, the NYISO's definition of ERIS is a Commission-approved variation from the *pro forma* definition[28] that is based on a facility's ability to satisfy the NYISO's Minimum Interconnection Standard. The current NYISO OATT definition of ERIS reads:

> **Energy Resource Interconnection Service ("ERIS")** shall mean the service provided by the ISO to interconnect the Developer's Large Generating Facility or Merchant Transmission Facility to the New York State Transmission System or to the Distribution System, ***in accordance with the NYISO Minimum Interconnection Standard,*** to enable the New York State Transmission System to receive Energy and Ancillary Services from the Large Generating Facility or Merchant Transmission Facility, pursuant to the terms of the ISO OATT.[29]

The key distinction between the *pro forma* and NYISO definitions of ERIS is the latter's reliance on the NYISO's Minimum Interconnection Standard, which "is designed to ensure reliable access by the proposed project to the New York State Transmission System or to the Distribution System. The Standard does not impose any deliverability test or deliverability requirement on the proposed interconnection."[30] The Minimum Interconnection Standard does not assume that a generating facility is operating at its full output. Instead, it permits the re-

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[27] *Id.* at n 828 (citing *Pro Forma* LGIP Section 1) (emphasis added).

[28] *See New York Independent System Operator Inc. and New York Transmission Owners*, Order Conditionally Accepting Compliance, 126 FERC ¶ 61,046 (2009); *New York Independent System Operator Inc. and New York Transmission Owners*, Order in Rehearing, Clarification, and Compliance, 127 FERC ¶ 61,318 (2009).

[29] OATT Attachment X, Section 30 (emphasis added).

[30] *Id.*

dispatch of the facility and/or other facilities to the extent possible under normal operating procedures. This allows the NYISO to use re-dispatch in interconnection studies to mitigate adverse reliability impacts that would otherwise require System Upgrade Facilities.

The definition of Minimum Interconnection Standard was accepted by the Commission in 2001.[31] When the NYISO first proposed this definition it explained that the "Minimum Interconnection Standard" is the standard "described in the System Reliability Impact Study Criteria and Procedures developed by NYISO staff and approved by the Operating Committee in July, 2000 ("Minimum Interconnection Standard methodology").[32] That Minimum Interconnection Standard methodology specifies that:

> Any potential adverse reliability impact identified by the [System Reliability Impact Study] that can be managed through the normal operating procedures of the NYISO and/or [Connecting Transmission Owner ("CTO")] will not be identified as a degradation of system reliability or noncompliance with the [North America Reliability Corporation ("NERC")], [Northeast Power Coordinating Council ("NPCC")], or [New York State Reliability Council ("NYSRC")] reliability standards.

The definition of Minimum Interconnection Standard has remained nearly unchanged since it was first accepted by the Commission in 2001. It was maintained in the NYISO's Order No. 2003 compliance filings,[33] and has been affirmed through multiple subsequent orders accepting revisions to the NYISO's interconnection procedures.[34]

The Minimum Interconnection Standard methodology has also remained virtually unchanged since first it was approved by the NYISO's Operating Committee in July 2000. The

[31] *New York Independent System Operator, Inc.*, Order Accepting Tariff Revisions Subject to Modifications, 97 FERC ¶ 61,118 (2001).

[32] *New York Independent System Operator, Inc.*, Filing of New Attachment S to Open Access Transmission Tariff to Implement Rules to Allocate Responsibility for the Cost of New Interconnection Facilities, Docket No, ER01-2967-000 at 5 (August 29, 2001).

[33] *See, e.g., New York Independent System Operator, Inc. and the New York Transmission Owners*, Joint Compliance on Consensus Deliverability Plan, Docket No. ER04-449-017 (August 5, 2008).

[34] *See, e.g., New York Independent System Operator, Inc.*, Interconnection Process Improvements, Letter Order, Docket No. ER18-80-000 (December 7, 2017).

methodology has since been incorporated in the NYISO's Transmission Expansion and Interconnection Manual which incorporates the original language almost verbatim, with the only change italicized in bold font below:

> Any potential adverse reliability impact identified by the ***Interconnection Study*** that can be managed through the normal operating procedures of the NYISO and/or CTO will not be identified as a degradation of system reliability or noncompliance with the NERC, NPCC, or NYSRC reliability standards.

Consistent with the variation in the NYISO's definition of ERIS and its application of the Minimum Interconnection Standard, the NYISO, in its interconnection studies, reduces the facility's output as necessary, to the extent possible under normal operating procedures,[35] to establish a feasible base dispatch.[36] As a result, if a generator's output is reduced to mitigate the need for System Upgrade Facilities the NYISO does not identify upgrades or facilities that could be considered "surplus." Therefore, the underlying premise of the surplus interconnection service requirement that transmission providers assume that generating facilities operate at their full capacity is not accurate in the NYISO's case.

As described above, the Commission has previously provided ISO/RTOs with broad flexibility under the independent entity variation standard to implement Commission interconnection directives in a manner that is tailored to specific regional circumstances and well integrated with existing market and planning rules. The Commission should clarify that

[35] Transmission constraints and other adverse reliability impacts internal to the New York Control Area ("NYCA") are typically manageable through NYISO and/or Connecting Transmission Owner normal operating procedures. There are scenarios in which neither the NYISO or the Connecting Transmission Owner can, through normal operating procedures, dispatch down generation to eliminate the need for System Upgrade Facilities. For example, multiple generation projects interconnecting to various locations within the NYCA may individually or collectively have an adverse impact on transfer limit capability over inter-area tie lines. Such impacts are not fully manageable by NYISO and/or Connecting Transmission Owner normal operating procedures alone.

[36] *See, e.g.*, System Reliability Impact Study Report, Queue No. 497 Bull Run Wind (approved by the NYISO's Operating Committee March 18, 2018); System Reliability Impact Study Report, Queue No. 474 North Slope Wind (approved by the NYISO's Operating Committee on February 9, 2017); System Reliability Impact Study Report, Bethlehem Energy Center Uprate Project (approved by the NYISO's Operating Committee on February 13, 2015).

Paragraph 477 was not intended to limit an ISO/RTOs' ability to obtain independent entity variations related to surplus interconnection service requirements or to require the NYISO to adopt rules based on premises that are not applicable to the NYISO region.

B. The *Pro Forma* Surplus Interconnection Requirements Are Fundamentally Incompatible with Existing Commission-Accepted NYISO Interconnection, Planning, and Market Rules

The Final Rule's surplus interconnection service requirements are fundamentally incompatible with certain aspects of the NYISO interconnection process and market design. If the NYISO's ability to demonstrate independent entity variations in compliance with these requirements were restricted, then the NYISO anticipates that it could have the unfortunate effect of overturning long-settled and understood procedures. It could also disrupt the careful balancing of interests in the process that already have been broadly agreed upon by NYISO stakeholders and accepted by the Commission.

1. NYISO's Unique Interconnection and Planning Rules

The prescribed surplus interconnection service requirements are incompatible with numerous existing provisions under the NYISO's planning and interconnection processes. As discussed above in Section III.A, the Final Rule's surplus interconnection service requirements are premised on the assumption that, in a Transmission Provider's interconnection studies, the generating facility being studied is deemed to operate at its full capacity. However, through the variation in the NYISO's definition of ERIS and its application of the Minimum Interconnection Standard, the NYISO, in its interconnection studies, reduces the facility's output as necessary to establish a feasible base dispatch.[37] As a result, there are fewer System Upgrade Facilities

[37] *See, e.g.*, System Reliability Impact Study Report, Queue No. 497 Bull Run Wind (approved by the NYISO's Operating Committee March 18, 2018); System Reliability Impact Study Report, Queue No. 474 North Slope Wind (approved by the NYISO's Operating Committee on February 9, 2017); System Reliability Impact

required for new interconnections under the NYISO's model, but there is also not an unused "surplus." Therefore, the underlying premise of the surplus interconnection service requirement is not accurate in the NYISO's case.

2. NYISO's Unique Market Design and Capacity Market Rules

Aspects of Final Rule's surplus interconnection service requirements do not consider and are inconsistent with the NYISO's existing market rules. For example, under the NYISO's existing market design, two projects behind the same Point of Interconnection must be modeled, scheduled, and settled as two separate generators. Similarly, a single generator cannot consist of two different technology types (*e.g.*, wind and storage). Different technology types must be separated into their own individual generator, even if they are behind the same Point of Interconnection. This difference makes adopting various components of the proposed rule infeasible, particularly with regard to the ability of two resources behind the same Point of Interconnection to transfer unused interconnection service between them. This is true whether the transfer of interconnection service between the resources is on an intermittent, short-term basis (*e.g.*, a generation facility transferring interconnection service to another resource when the first facility it out for maintenance) or whether the transfer of interconnection service between the resources is on a continuous basis (*e.g.*, a solar facility transferring interconnection service during night-time hours to a wind facility).

The proposed rule is also incompatible with capacity market rules. First, Installed Capacity ("ICAP") Suppliers have a daily requirement to offer into the Day Ahead Market for energy in the amount of the ICAP equivalent of their capacity sold for that month.[38] That

Study Report, Bethlehem Energy Center Uprate Project (approved by the NYISO's Operating Committee on February 13, 2015).

[38] *See* Section 5.12.7 of the Services Tariff. An example of the general rule when applied to a hypothetical generator that sells an ICAP equivalent of 100 MW of UCAP in a given month is that it is required to offer 100 MW

obligation would preclude them from transferring ERIS in any month for which they sold ICAP or would establish a scenario that opens the door to a supplier failing to meet its obligations to offer energy as required under the rules and for its expected availability.

Second, the Final Rule's directive regarding the utilization of surplus interconnection service for two facilities behind the same Point of Interconnection on a scheduled, periodic basis for a specified number of MW available only intermittently is not feasible under the NYISO's capacity market rules. Only one of the two suppliers in the proposed scenario would be able to offer into the NYISO's capacity market for an obligation month because each supplier behind the same Point of Interconnection, even if the same technology type, might have different proven capabilities (*i.e.*, for traditional technology types, their DMNC values)[39] and different outage rates (*i.e.*, EFORd values)[40], both of which are used to calculate resources' Unforced Capacity ("UCAP"), which is the quantity of capacity they are allowed to offer into the market each Capability Period. Thus, were the NYISO required to implement the surplus interconnection service rule, commitment participation caps for resources at the Point of Interconnection would need to be established. Even if such a rule could reasonably be fashioned to identify the manner in which such resources would be qualified and the amount thereof, the energy market obligations of ICAP Suppliers that have sold UCAP for an obligation month would also need to be revised to reflect the amount in which each resource, or both, would have to offer into the Day Ahead Market for energy. In any case, both resources should be subject to the NYISO's Supplemental Resource Evaluation if required.

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of energy every day. That generator must have a corresponding amount of ERIS to validly offer that energy every day, even if the generator actually runs infrequently or even not at all.

[39] A DMNC value or "Dependable Maximum Net Capability" is an annual demonstration of a generator's ability to generator power, specifically, its sustained maximum net output. *See* Section 2.4 of the Services Tariff.

[40] An EFORd or "Equivalent Demand Forced Outage Rate" represents the portion of time a unit is dispatched and unable to respond due to forced outages or derates. *See* Section 2.5 of the Services Tariff.

3. NYISO's Unique CRIS and Buyer-Side Mitigation Rules

a. CRIS Rules

The Final Rule's surplus interconnection service requirements pose unique challenges with respect the NYISO's second level of interconnection service, Capacity Resource Interconnection Service ("CRIS"). The NYISO should be provided an opportunity to demonstrate in its compliance filing that the existing CRIS rules (perhaps with certain limited modifications) adequately address the objectives identified with the surplus interconnection service requirement.

CRIS was developed and accepted by the Commission as an independent entity variation to Network Resource Interconnection Service ("NRIS") based on the "unique regional circumstances" related to the NYISO.[41] When tariff revisions implementing CRIS and the associated NYISO Deliverability Interconnection Standard were submitted in 2008, it represented the culmination of years of work with stakeholders to develop an acceptable framework to implement a second level of interconnection service that contained a deliverability standard as required by the Commission while also being compatible with regional circumstances and rules.[42] Under the current tariff, a facility must meet the NYISO's

[41] *New York Independent System Operator, Inc., et al.*, 108 FERC ¶ 61,159, at PP 24-28 (2004) (requiring the NYISO's LFIP to incorporate two levels of interconnection service—one of which would contain a deliverability standard, similar to NRIS), *order on reh'g*, 111 FERC ¶ 61,347, at PP 13-14 (2005) (recognizing two competing principles—the requirement under Order No. 2003 to offer two levels of interconnection service and that the NYISO's region is distinct and should have flexibility to craft a system appropriate to New York's specific needs); *see also New York Independent System Operator, Inc., et al.*, Letter Order, Docket No. ER04-449-020 (2009); *New York Independent System Operator, Inc., et al.*, 126 FERC ¶ 61,046 (2009), *order on reh'g*, 127 FERC ¶ 61,318 (2009).

[42] *See New York Independent System Operator, Inc., et al.*, Compliance Filing and Request for Further Extension of Time, Docket No. ER04-449-017 (August 5, 2008); *see also New York Independent System Operator, Inc.*, 122 FERC ¶ 61,267 (2008) (providing guidance on NYISO's Consensus Plan filed on October 5, 2007 and directing revisions to the OATT to be submitted by August 4, 2008); *New York Independent System Operator, Inc., et al.*, Consensus Deliverability Plan, Docket Nos. ER04-449-003, -007, -008 (October 5, 2007) (providing the agreed-upon framework under which the NYISO and stakeholders would facilitate the development of tariff

Deliverability Interconnection Standard (as well as have ERIS) before it can receive CRIS[43] and must obtain CRIS in order to become eligible to become an Installed Capacity Supplier.[44]

NYISO's OATT Attachment S contains a comprehensive rule set regarding the requirements for obtaining CRIS, maintaining CRIS, and transferring CRIS.[45] A key aspect of those rules provides for transfers of CRIS on a bilateral basis between an existing facility and a new facility, whether the facilities are at the same or different electrical location.[46] In particular, transfers of CRIS at the same electrical location are permitted without the recipient project being evaluated for deliverability in the NYISO's interconnection process (although the project must have ERIS and become operational prior to the original facility's CRIS expiring).[47]

In light of the NYISO's unique CRIS rules, and the procedures already developed to permit transfers of CRIS at the same electrical location, the NYISO should be permitted the flexibility, under an independent entity variation, to demonstrate how these existing rules satisfy the goals of the Final Rule's surplus interconnection service requirements.

b. Intersection between the CRIS Rules and Buyer-Side Mitigation Rules

Under the NYISO's interconnection procedures and market rules, CRIS transfers are permitted under specific circumstances and, if the "transferee" is located in a Mitigated Capacity Zone or a New Capacity Zone, both CRIS transfers at the same location and CRIS transfers from a different location are subject to the buyer-side capacity market power mitigation measures

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revisions); *New York Independent System Operator, Inc., et al.*, Compliance Filing and Request for Further Extension of Time, Docket No. ER04-449-005 (February 7, 2005).

[43] OATT Attachment S, Section 25.3.1.

[44] OATT Attachment S, Section 25.7.4; Services Tariff, Section 5.12.1.

[45] *See, generally*, OATT Attachment S.

[46] OTT Attachment S, Sections 25.9.4 and 25.9.5.

[47] Same location CRIS transfers are permitted if a facility deactivates an existing unit and commissions a new one at the same electrical location. The CRIS of the deactivated facility may be transferred to the new facility at that same electrical location provided that the new facility becomes operational within three years from the deactivation of the original facility. *See* OATT Attachment S, Section 25.9.4.

("BSM Rules").[48] The BSM Rules are comprehensive rules and were carefully developed with stakeholders. They provide that the examination of a recipient of transferred CRIS occurs in conjunction with the NYISO's examination of other proposed new projects and existing resources' requests for Additional CRIS MW. The processes are not merely procedural steps but are critical to the NYISO's ability to perform the economic analyses required to determine whether a proposed project's entry would be uneconomic and to establish Offer Floors.

The Commission recently recognized the closely integrated nature of the Class Year interconnection process and the BSM Rule processes and determinations in an order denying tariff waiver requests that implicated those rules.[49] In that order, the Commission weighed how a waiver as to a single project could disrupt the processes and have undesirable consequences. For example, there could be delays in the development of other projects,[50] "adjustments to the BSM Rules to address other scenarios not specifically contemplated could result in over- or under-mitigation of other projects from the balanced approach that is achieved by the BSM Rules."[51] Further, the processes and economic analyses used to make determinations under the BSM Rules are reliant on information from and processes under the NYISO's interconnection and Class Year processes.

Requiring the NYISO to provide an expedited or alternative process for transferring CRIS in order to comply with the Final Rule would allow the "transferees" to bypass established

[48] The BSM Rules are set forth in Section 23.4.5.7, *et seq*. of the Services tariff.

[49] *See Bayonne Energy Center, LLC,* 163 FERC ¶ 61,095 (2018) at PP 30-31.

[50] Because these Surplus transfers could occur at any time, even after a Class Year base case was established, they could disrupt not only the NYISO's evaluation under the BSM Rules of other proposed capacity resources but also "disrupt the NYISO's administration of the Class Year rules. This would negatively affect other members of the Class Year, and risk delaying other Class Year processes including potentially the start of the next Class Year." *See Bayonne Energy Center, LLC,* Docket No. ER 18-1301-000, *Motion to Intervene and Comments of the New York Indep. Syst. Operator, Inc.* (April 18, 2018) ("NYISO Comments on BEC Waiver Request") at pp. 11, 21.

[51] *See* NYISO Comments on BEC Waiver Request at 24.

procedures involving the NYISO's interconnection process that cannot be isolated from the BSM Rules. It goes to the heart of a threshold capacity market requirement to examine projects to prevent uneconomic entry in Mitigated Capacity Zones and New Capacity Zones. Even if a unique buyer-side market power mitigation rule set were developed that applied only to CRIS "transferees," so as to comply with the Final Rule's directive, the adequacy of the buyer-side mitigation determinations for both the subject CRIS transfer project and all other Developers seeking to enter the market would be diminished.

The NYISO cannot envision any practicable way to implement the *pro forma* surplus interconnection service requirements that would comport with its BSM Rules. Therefore, the NYISO should be afforded the opportunity, under an independent entity variation, to demonstrate how the NYISO's CRIS rules adequately meet the goal of the surplus interconnection service requirements within the structure of the NYISO's markets.

The Final Rule's surplus interconnection service requirement, absent a modification, would require that the Services Tariff contain an entirely new rule set so that the NYISO could conduct a BSM Rule examination of projects with CRIS transfers. Such modifications would also need to consider whether adjustments to rules governing examinations and the BSM Forecasts[52] used therein might be needed for projects being reviewed in isolation from projects that are currently evaluated under the BSM Rules at the same time.

The Final Rule's directive would also require an even more complex revision to the "Renewable Exemption" under the BSM Rules which the NYISO developed in response to a Commission mandate. The Renewable Exemption includes a cap per Class Year on the number

[52] *See* Section 23.4.5.7.15 of the Services Tariff.

of MWs that can receive a Renewable Exemption.[53] The inputs into the Self Supply Exemption in the BSM Rules would also need to be revised to ensure that they continue to appropriately capture other anticipated entrants into the market.[54]

As is clear from the preceding examples, the Final Rule's generic directive regarding the utilization of surplus interconnection service did not consider, and would have broad ramifications for, existing NYISO rules. The NYISO therefore needs flexibility to develop independent entity variations in this area without prescriptive limitations. The Commission should clarify that Paragraph 477 does not impose such limitations.

IV. ALTERNATIVE REQUEST FOR REHEARING

If the Commission denies the NYISO's request for clarification, the NYISO requests, in the alternative, that the Commission grant rehearing and remove Paragraph 477's limitations on independent entity variations from the surplus interconnection service requirements.

Strictly imposing the limitations set forth in Paragraph 477 on ISOs/RTOs would be inconsistent with more than a decade of Commission precedent and practice, described above, which provides ISO/RTOs with broad flexibility to satisfy the Commission's interconnection objectives in a manner that is tailored to regional circumstances and needs. The Final Rule makes no attempt to justify this departure from precedent or to explain why limitations on independent entity variations related to surplus interconnection service are necessary. It likewise

[53] The Commission directed the NYISO to file tariff compliance revisions to establish a Renewable Energy Exemption. *See* 153 FERC ¶ 61,022 (2015). Those revisions are pending before the Commission in Docket No. ER16-1404-000.

[54] The Commission directed the NYISO to file tariff compliance revisions to establish a Self Supply Exemption. *See* id. Those revisions are pending before the Commission in Docket No. ER16-1404-000.

offers no rationale for limiting independent entity variations in this one area while continuing to follow the traditional standard in all others.

In addition, the Final Rule neither considered nor addressed the facts (discussed in detail in Section III above) that: (i) the core assumptions underlying its *pro forma* surplus interconnection service requirements are not applicable to the NYISO; and (ii) the *pro forma* surplus interconnection requirements are fundamentally incompatible with the established Commission-accepted NYISO tariff and market rules. The Final Rule made no showing that the *pro forma* surplus interconnection requirements should be applied to regions where the assumptions driving their establishment do not exist. Similarly, it made no showing that the existing NYISO rules that would be disrupted if the NYISO were compelled to adopt the *pro forma* surplus interconnection service requirements are unjust, unreasonable, or unduly discriminatory or that the costs of making fundamental changes to existing NYISO systems would not greatly outweigh any benefits of the *pro forma* requirements.[55] Finally, to the extent that the Commission believes that limitations on independent entity variations might be appropriate for ISO/RTO regions other than NYISO, it has not explained why such limitations should be imposed on NYISO.

Accordingly, if the Commission denies the requested clarification and adopts a strict interpretation of Paragraph 477 that limits or precludes the NYISO from seeking independent entity variations, it would not have engaged in reasoned decision-making. In such a case, the

[55] 16 U.S. Code § 824e(a) (providing that "[w]henever the Commission … shall find … that any rule, regulation, practice, … is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable … rule, regulation, practice, … and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein.")

Commission should grant rehearing and remove Paragraph 477's limitations on an ISO/RTO's ability to establish independent entity variations.

V. SPECIFICATION OF ERRORS/STATEMENT OF ISSUES

In accordance with Rule 713(c),[56] the NYISO submits the following specifications of error and statement of the issues on which it seeks rehearing of the Final Rule:

- The Commission's requirements for surplus interconnection service are premised, with respect to the NYISO, on assumptions derived from the generic Order No. 2003 framework that are inapplicable to the NYISO. Therefore, to the extent that the Commission denies clarification, it must grant rehearing and reverse Paragraph 477's limitations on independent entity variations. The Commission has not engaged reasoned decision-making because: (1) not all transmission providers perform interconnection studies assuming that each interconnection customer is fully utilizing its interconnection service; and (2) Order No. 2003 does not mandate that transmission providers assume that generating facilities operate at their full capacity.[57]

- The Final Rule provides no explanation of why limitations on independent entity variations related to surplus interconnection service are necessary. Moreover, the Commission has not demonstrated that the requirements set forth in Paragraph 477 must be imposed uniformly across all the ISO/RTOs or shown that the various NYISO rules and processes that Paragraph 477 threatens to disrupt would be unjust and unreasonable. To the extent that the Commission denies the NYISO's ability to use an independent entity variation to establish requirements for surplus interconnection service that are tailored to the unique circumstances in New York, such a requirement would be inconsistent with reasoned decision-making, would represent an unexplained departure from Commission policy and precedent, and could have needlessly costly and disruptive impacts on the NYISO's interconnection procedures as previously accepted by the Commission.[58]

[56] 18 C.F.R. § 385.713(c).

[57] Final Rule at PP 468-469.

[58] *See, e.g., Motor Vehicle Mfr. Ass 'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 at 43 (1983); *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 at 839 (D.C. Cir. 2006); *NorAM Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998); *citing K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992); *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 12 (D.C. Cir. 2014).

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant the requested clarifications, or in the alternative grant rehearing, of the Final Rule as specified above.

Respectfully submitted,

/s/ Sara B. Keegan
Sara B. Keegan
Counsel for the
New York Independent System Operator, Inc.

May 22, 2018

cc: Anna Cochrane
James Danly
Jette Gebhart
Kurt Longo
David Morenoff
Daniel Nowak
Larry Parkinson
J. Arnold Quinn
Douglas Roe
Kathleen Schnorf
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 22nd day of May 2018.

/s/ Joy A. Zimberlin

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