

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.)

Docket Nos. ER16-1404-002

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

In accordance with Rule 213 of the Federal Energy Regulatory Commission’s (the “Commission’s”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”), respectfully submits this request for leave to answer and its answer (“Answer”). This Answer responds to the certain arguments included in the comments and protests in this proceeding,² which address the NYISO’s April 7, *Compliance Filing and Request for Commission Action No Later than June 8, 2020* (“Compliance Filing”).

The Compliance Filing was submitted in response to the Commission’s February 2020 Order³ directing the NYISO to revise its “Renewable Exemption” tariff provisions under the “buyer-side” capacity market power mitigation measures (the “BSM Rules”) in Attachment H⁴ to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).⁵

¹ 18 C.F.R. §385.213 (2019).

² These are the: (i) *Notice of Intervention and Limited Protest of the New York State Public Service Commission, New York State Energy Research and Development Authority, and the City of New York* (the “NYS Protest”); (ii) *Indicated New York Transmission Owners’ Protest* (the “Indicated NYTOs’ Protest”); (iii) *Comments and Protest of Independent Power Producers of New York, Inc.* (“IPPNY Protest”); (iv) *Comments and Limited Protest of Helix Ravenswood, LLC* (“Ravenswood Protest”); and (v) *Comments of the American Wind Energy Association, the Alliance for Clean Energy New York, the Natural Resources Defense Council, Sustainable FERC Project, and the Solar Council* (“Comments of the Clean Energy Advocates”). For ease of reference, this Answer sometimes refers to some or all of these five comments and protests collectively as “Protests.”

³ *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 (2020).

⁴ The BSM Rules appear at Section 23.4.5.7, *et. seq.* of the Services Tariff.

⁵ Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff, or, in the case of terms pertaining to the Class Year Study process, the NYISO’s Open Access Transmission Tariff (“OATT”).

Specifically, the Compliance Filing proposed a new methodology for calculating the limit on the amount of Unforced Capacity (“UCAP”) available for a Renewable Exemption (the “Renewable Exemption Limit”) for each Mitigated Capacity Zone within each Class Year Study, Additional System Deliverability Upgrade (“SDU”) Study and Expedited Deliverability Study.

The Protests claim that there are various flaws in the Compliance Filing’s Renewable Exemption Limit proposal. None of them, however, ask that the Commission reject the Renewable Exemption Limit in its entirety or object to the implementation of the Renewable Exemption starting in Class Year 2019. The NYISO continues to believe that the filed version of Renewable Exemption Limit is just, reasonable, not unduly discriminatory, compliant with the February 2020 Order, and consistent with other Commission precedent.⁶ The NYISO therefore renews its request that the Commission accept the Compliance Filing without imposing any conditions⁷ or instituting any further proceedings.

It also continues to be imperative that the Commission make the Compliance Filing’s proposed revisions effective by the requested date, *i.e.*, June 9, 2020. As the NYISO previously stated, “[i]n order to complete Class Year 2019 on time, the Renewable Exemption rules must be in place well in advance of the point in the Class Year process when the NYISO is required by tariff to make Offer Floor and exemption determinations under the BSM Rules (“BSM Determinations”),” in order to avoid over-mitigation.⁸ None of the Protests have justified delaying the introduction of the Renewable Exemption Limit beyond the requested effective

⁶ The NYISO’s position is supported by the attached Affidavit of Shaun Johnson. As is permitted by the Commission’s April 2, *Order Granting Blanket Waiver of In-Person Meeting and Document Notarization Requirements*, 171 FERC ¶ 61,004 (2020), Mr. Johnson’s affidavit is signed but not notarized.

⁷ In particular, the Commission should not adopt the Indicated NYTOs’ proposed tariff revisions. For the reasons set forth in this Answer, there is no reason to adopt their suggested changes.

⁸ Compliance Filing at 2. *See also* Compliance Filing at 21.

date. In addition, the NYISO's independent Market Monitoring Unit ("MMU"), Potomac Economics, Ltd., supports the timely implementation of the Renewable Exemption Limit, in the form proposed by the Compliance Filing.⁹ To the extent that the Commission believes that further improvements to the Renewable Exemption Limit formula are warranted there is ample time to develop them through the NYISO's shared governance stakeholder process.

Because the Commission discourages unnecessary answers to protests, the NYISO has limited this Answer to those points where it is most necessary to clarify complex issues or provide additional information. The Commission should not construe the NYISO's silence on any other issue raised by the Protests as agreement or as any kind of concession.

I. REQUEST FOR LEAVE TO ANSWER

The NYISO is authorized to answer pleadings that are styled as "Comments" as a matter of right.¹⁰ The Commission may also at its discretion accept, and routinely accepts, answers to protests where they help to clarify complex issues, provide additional information, are helpful in the development of the record in a proceeding, or otherwise assist in the decision-making process.¹¹ The NYISO should be permitted to answer the Protests because they raise complex questions concerning the design and application of the proposed Renewable Exemption Limit

⁹ See *Motion to Intervene and Comments of the New York ISO's Market Monitoring Unit*, Docket No. ER16-1404-002 (April 28, 2020) ("MMU Comments").

¹⁰ Rule 213(a)(3) authorizes parties to answer any pleading except to the extent that an answer is expressly prohibited. To the extent that the Commission deems any comment in this proceeding to be tantamount to a protest, the NYISO requests leave to answer it.

¹¹ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093, at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058, at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160, at P 13 (2012); and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217, at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

which have significant market implications. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

II. ANSWER

A. The Compliance Filing’s Proposed Definition of “Incremental Regulatory Retirements” Is Consistent with the February 2020 Order’s Directives

As the Compliance Filing explained, the Renewable Exemption Limit for a Mitigated Capacity Zone would be the greater of: (a) the UCAP MW associated with the NYISO’s calculation of the Minimum Renewable Exemption Limit that would reduce the market price forecast for the Mitigated Capacity Zone by no more than \$0.50/kW-month; or (b) the sum of: (i) the UCAP MW associated with the “Change in Forecasted Peak Load” calculated by the NYISO; (ii) the UCAP MW value identified by the NYISO associated with the “Incremental Regulatory Retirements;” (iii) the “Unforced Capacity Reserve Margin” (“URM”) impact of the Qualified Renewable Exemption Applicants in the Class Year Study, Additional SDU Study, or Expedited Deliverability Study calculated by the NYISO; and (iv) the UCAP MW in the “Renewable Exemption Bank” for each Mitigated Capacity Zone¹²

The UCAP MW value of “Incremental Regulatory Retirements” is thus a core component of the proposed Renewable Exemption Limit formula. The Compliance Filing emphasized that “[t]his value is intended to reflect incremental retirements attributable to ‘direct’ regulatory action” because “when out-of-market actions are taken that *reduce* supply, these actions offset the effects of the renewable-resource policies that increase supply.”¹³ The MMU

¹² Compliance Filing at 6-7.

¹³ Compliance Filing at 8.

Comments support the inclusion of Incremental Regulatory Retirements in the formula in the form proposed by the NYISO.¹⁴

All of the Protests objected to this component of the NYISO's proposal. Some argued that including only Incremental Regulatory Retirements is overly limited and that the Renewable Exemption Limit formula should encompass additional, if not all, retirements and seasonal deactivations. Accepting these arguments would make more Renewable Exemptions available. Others took the opposite view; agreeing that it was appropriate for the formula to include only a subset of retirements caused by regulatory action, but then took issue with the NYISO's approach to distinguishing these retirements from economic retirements. These Protests contend that the NYISO's proposal would include too many retirements and would thus allow too many Renewable Exemptions. The NYISO believes that both types of challenges are misplaced. The Compliance Filing's approach is consistent with what Commission precedent requires. Including the Incremental Regulatory Retirements as a subset of forecasted retirements in the Renewable Exemption Limit is narrowly-tailored to market and regulatory dynamics within each Mitigated Capacity Zone, appropriately limits the risk of price suppression, and will allow for predictable and transparent implementation by the NYISO.

1. The Incremental Regulatory Retirements Proposal Is Not Too Narrow

The Indicated NYTOs' Protest argues that the Incremental Regulatory Retirements proposal is too narrow and that the Renewable Exemption Limit formula should instead account for "all incremental retirements."¹⁵ The NYS Protest and the Comments of the Clean Energy Advocates make similar assertions.¹⁶ The Compliance Filing's proposal that the Renewable

¹⁴ See MMU Comments at 8-10.

¹⁵ Indicated NYTOs' Protest at 9.

¹⁶ See Comments of the Clean Energy Advocates at 5-6; NYS Protest at 5-7.

Exemption Limit formula only recognize Incremental Regulatory Retirements is consistent with the February 20 Order and with other Commission precedent on capacity market power mitigation. As the Compliance Filing noted, the principle underlying the NYISO’s proposed treatment of retirements is that the BSM Rules should protect the market from state actions that create an “artificial supply-demand disequilibrium.”¹⁷ When the state action reduces supply it offsets the effects of state policies to increase supply.¹⁸ Thus, “out-of-market retirements” should “offset the effects of out-of-market investment.”¹⁹ “Ultimately, it is the net effect of State policy on supply in the capacity market that matters . . .”²⁰ If a Generator is uneconomic and unable to recover its costs sufficiently via the markets, regardless of external policy actions, it is already expected to exit and thus should not count as an offset to non-market based entry.²¹ The NYISO’s understanding is that this approach is consistent with Commission precedent, including the Commission’s acceptance of the Competitive Auctions with Sponsored Resource rules in New England.²²

The MMU Comments support the NYISO’s proposed approach to retirements. They argue that only State actions that reduce surplus supply truly ameliorate the price suppressive concerns associated with State-subsidized entry.²³ According to the MMU, “it is essential” that only retirements that are “the result of State policies or regulatory actions, *i.e.*, that would not

¹⁷ Compliance Filing at 8.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 9.

²² MMU Comments at 9.

²³ MMU Comments at 8-9 (the NYISO’s independent MMU performs a similar function for ISO New England, Inc. and was heavily involved in the design of CASPR).

likely have occurred based purely on market prices” should be considered under the Renewable Exemption Limit formula. “Incremental Regulatory Retirements should not include retirements that are substantially caused by market outcomes.”²⁴

The Indicated NYTOs’ Protest notes that the NYISO proposal would not count in the Renewable Exemption calculation the seasonal (primarily summer) generator deactivations traceable to regulatory actions. It argues that such an exclusion is unjust and unreasonable because it would foster increased prices and problematic price signals, and because it is susceptible to gaming.²⁵ The NYISO disagrees with these assertions. For units that take seasonal outages but that participate in the market for the remainder of the year, it is reasonable to exclude them from the Renewable Exemption calculation because they will continue to be operational and to provide capacity for a portion of the year. To the extent that such units are truly uneconomic, they will exit the market permanently; at that point, they will be included in the Renewable Exemption to the extent that the NYISO determines, in consultation with the MMU, that they qualify as Incremental Regulatory Retirements. Until then, seasonally deactivated resources would be removed from the forecast used to evaluate new entrants under the Part A Test and the Part B Test.²⁶ This treatment would appropriately account for the seasonal nature of these resources.

²⁴ *Id.*

²⁵ *See* Indicated NYTOs at 5.

²⁶ The “Part A Test” and “Part B Test” are not currently defined terms in the Services Tariff but they are described in detail in Section 23.4.5.7.2. The NYISO’s pending filing in Docket No. ER20-1718-000 would make “Part A Exemption Test” and “Part B Exemption Test” defined tariff terms.

There is no reason to delay the implementation of the NYISO's Renewable Exemption Limit proposal because of gaming-related concerns involving resources taking seasonal outages rather than retiring outright to comply with regulatory actions in order to limit the Renewable Exemption Limit. Taking a seasonal outage is a legitimate regulatory compliance plan that allows resources to continue to operate and does not preclude the resource from taking steps to become operational in the future while complying with applicable regulations. Of course, the unit could choose to retire, at which point the NYISO would determine, in consultation with the MMU, whether it should be counted as an Incremental Regulatory Retirement. To date, the NYISO is not aware of any instances in which a Market Participant has engaged in gaming associated with taking otherwise permissible seasonal outages. Accordingly, the near-term risk posed by gaming stratagems of this type appears to be low.

2. The Incremental Regulatory Retirements Proposal Is Also Not Overly Broad

The IPPNY Protest and Ravenswood Protest both claim that the Incremental Regulatory Retirement tariff definition should be revised to more clearly exclude economic retirements.²⁷ Their suggested changes are unnecessary. It is already clear, from the plain language of the Compliance Filing that purely market-based economic retirements will be excluded from the definition, which obviates any need for IPPNY's proposed revision.²⁸ Proposed new Section 23.4.5.13.5.3 is clear that Incremental Regulatory Retirements will only include "incrementally new MW of Retirements . . . that have retired, or are planning to permanently cease operations, in order to comply with or in response to new or amended regulations or statutes" and that such regulatory action "must be a significant factor in the retirement of the Generator (*i.e.*, a

²⁷ See IPPNY Protest at 2; Ravenswood Protest at 17.

²⁸ See IPPNY Protest at 7-8.

factor that contributes materially to the retirement.”) The NYISO’s transmittal letter emphasized this by stating that retirements only fall under the definition of Incremental Regulatory Retirements when “a public policy decision or action *external* to the market contributes materially to the retirement.”²⁹ Ultimately, as several parties noted, all retirements are an economic decision. The important distinction is what drove the decision; underlying market dynamics, or policy requirements that materially impacted investment decisions.³⁰

The Commission should also reject IPPNY’s suggestion that Section 23.4.5.7.13.5.3 of the Services Tariff be modified to require that the NYISO “perform an economic analysis of retiring generators to provide an adequate basis” for determinations and to provide the analysis to the MMU for review. Modifying the tariff in this way would be unnecessary, redundant, and unhelpful. In order for the NYISO to make a determination of whether a resource qualifies as an Incremental Regulatory Retirement under the standard articulated in the proposed tariff provision, the NYISO, in consultation with the MMU, will look at all relevant factors, including economics, related to units’ proposed exits.

The NYISO’s proposal works in conjunction with existing tariff mechanisms, to establish what subset of retirements would be included as Incremental Regulatory Retirements. Section 23.4.5.6.1 of the Services Tariff empowers the NYISO to conduct a physical withholding review whenever Market Participants seek to remove capacity from a Mitigated Capacity Zone. This provision would apply to all units that could potentially qualify as Incremental Regulatory Retirements. In addition, under the NYISO’s recently adopted Short-Term Reliability Process

²⁹ Compliance Filing at 8.

³⁰ As discussed below, none of the Protests have justified delaying the introduction of the Renewable Exemption Limit beyond the June 2020 date requested by the Compliance Filing.

(“STRP”),³¹ Section 38 of the OATT requires resources to submit all relevant economic data for the NYISO’s use in this review. Therefore, the tariff already provides for an economic evaluation.

IPPNY and Ravenswood both argue against the inclusion in Incremental Regulatory Retirement determinations of retirements that trigger a reliability need, unless a renewable resource is selected to address that need.³² As was noted above, the Compliance Filing’s proposed revisions, would work in tandem with existing tariff mechanisms, to determine what qualifies as “Incremental Regulatory Retirement.” Incremental Regulatory Retirements will not include units that are either found to be needed for reliability (before a solution is identified) or that are operating under a Reliability Must Run (“RMR”) Agreement. Proposed Section 23.4.5.7.13.5.3 would only potentially include retirements as Incremental Regulatory Retirements if those retirements are reflected in the BSM Forecasts (meaning those units that are excluded from the BSM Forecasts).³³ Existing Sections 23.4.5.7.15.6 and 23.4.5.7.15.7 specify that various resources needed for reliability will be “Excluded Units” for BSM Forecast purposes. Such resources therefore cannot qualify as Incremental Regulatory Retirements. Similarly, when proposed Generator retirements require a temporary RMR Agreement with a Generator, these prospective retirements are not included in the BSM Forecast. Therefore, noticed Generator retirements that are temporarily retained via an RMR Agreement will not be counted in the determination of Incremental Regulatory Retirements.

³¹ See *New York Independent System Operator, Inc.* 171 FERC ¶ 61,082 (2020).

³² IPPNY at 2; Ravenswood at 19.

³³ “BSM Forecast” is defined in Section 23.4.5.7.15 of the Services Tariff as encompassing both forecasts of ICAP Spot Market Auction prices and revenues used to determine Unit Net CONE.

Other currently effective Services Tariff provisions further address Ravenswood’s concern by accounting for the reason that resources are expected to exit. Section 38 of the OATT details the NYISO’s Short-Term Reliability Process, which evaluates, among other things, whether a deactivation will trigger a Generator Deactivation Reliability Need.”³⁴ Deactivations are assessed in quarterly Short-Term Reliability Assessment (“STAR”) studies.³⁵ If a Generator Deactivation Reliability Need that cannot wait to be resolved in the next Reliability Needs Assessment is identified, then the NYISO will solicit Short-Term Reliability Process Solutions.³⁶

As Section 38.10.2.1 of the OATT explains, “[t]his solution selection process is designed to ensure that executing an RMR Agreement with a Generator is a last resort to addressing a Short-Term Reliability Process Need.” Even when the NYISO executes an RMR Agreement with a Generator, the RMR Agreement is required to be temporary.³⁷

³⁴ See OATT Section 38.1, which defines a Generator Deactivation Reliability Need as a “violation or potential violation of one or more Reliability Criteria and applicable local criteria” that “can be resolved, in whole or in part, by the continued availability or operation of an Initiating Generator. An “Initiating Generator” is a Generator that submitted a formal Generator Deactivation Notice or that entered an ICAP Ineligible Forced Outage. *Id.*

³⁵ See OATT Sections 38.1 (definition of STAR), 38.2 (process overview). The STAR studies have a five year scope.

³⁶ See OATT Sections 38.4 (solution solicitation process) and 38.5 (inviting Generators in Mothball Outage or IIFO to return to service). Under the solution selection process in Section 38.10 of the OATT, the NYISO is required to prefer market-based solutions and transmission solutions to retaining Generators through RMRs. The NYISO will first use market-based solutions that it determines to be viable and sufficient to reduce or eliminate any identified STRP needs. See OATT Section 38.6.2, 38.10.1. Transmission solutions are also preferred to Generation solutions. See, e.g., OATT Sections 38.10.1.1 See also OATT Section 38.10.2.1 (“If the ISO determines that there is a Viable and Sufficient permanent transmission solution that completely satisfies the Short-Term Reliability Process Need, the ISO may select that solution.”)

³⁷ See OATT Section 38.26, Article 2, Section 2.2. The NYISO is required to model a Generator that is subject to an RMR Agreement as out-of-service in its Reliability Needs Assessment so that the NYISO will procure a permanent solution to address any Reliability Need that a Generator is temporarily addressing while it is operating pursuant to an RMR Agreement. See also *New York Independent System Operator, Inc.*, 150 FERC ¶ 61,116 at P16 (2015) (“Furthermore, NYISO’s proposal must include the requirement that any future generation resource-specific RMR filing made with the Commission should

The BSM Rules also specify in detail which resources should be deemed to be “existing” in BSM Forecasts. Under Section 23.4.5.7.15.7.2 of the Services Tariff, “Initiating Generators with an associated Generator Deactivation Reliability Need for which a Short-Term Reliability Process Solution has not yet been identified ... shall be included in Existing Units for the expected duration of such Generator Deactivation Reliability Need with which they are associated.” That provision of the Services Tariff also requires that the NYISO include a resource in Existing Units for BSM Forecast purposes if the NYISO determines that it will continue to be economic or obtains other information demonstrating that the resource will continue in service.

The Ravenswood Protest argues that the Compliance Proposal is unclear as to whether units in either a Mothballed or an IIFO status should be included as Incremental Regulatory Retirements.³⁸ They request that the NYISO be directed “to revise its proposed Incremental Regulatory Retirement provision to specifically state that units retiring following being in either status will be excluded from the Public Policy MW Limit component of the Renewable Exemption Cap calculation.”³⁹ Once again, the currently effective Services Tariff already includes provisions that address Ravenswood’s concern by accounting for the reason that such resources are expected to exit. Section 23.4.5.7.15.7.2 of the Services Tariff also requires that the NYISO include a resource in Existing Units for BSM Forecast purposes if the NYISO

detail the alternative solutions evaluated and justify the term of the proposed RMR agreement vis-à-vis the timing of alternative solutions to the identified reliability need. [footnote omitted] This last requirement reflects the NYISO’s belief that RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place and that all alternatives should be considered to ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability needs.”)

³⁸ See Ravenswood Protest at 19.

³⁹ *Id.*

determines that it will continue to be economic or obtains other information demonstrating that the resource will continue in service. Such units would clearly not meet the criteria provided for an Incremental Regulatory Retirement. In other words, existing processes already require the NYISO to evaluate units in a Mothballed or IIFO status and evaluate if they would be economic during the forecast period, in which case they would need to be counted as Existing Units for BSM Forecast purposes. However, should these units be forecasted to be uneconomic to return, or to continue operation, they would be included as a retirement under the BSM Rules, and if the criteria for Incremental Regulatory Retirements are met, they would, and should, be included as Incremental Regulatory Retirements. (A unit currently in an IIFO or Mothballed status would also need to have expressed its intention to permanently cease operations in order to qualify as an Incremental Regulatory Retirement.)

Moreover, as the Compliance Filing pointed out, the NYISO will adjust the Renewable Exemption Bank – *i.e.*, the mechanism by which UCAP MW designated for inclusion in the Renewable Exemption Limit is potentially carried forward from one study period to another – to account for prior forecasts of retirements that did not materialize. Specifically, forecasted Incremental Regulatory Retirements that do not actually exit will be deducted from the bank. A Generator that is needed for reliability, *e.g.*, it was previously included as an Incremental Regulatory Retirement, but has since been identified as a solution to a subsequently identified reliability need, and has temporarily delayed its retirement to enter into a RMR Agreement after the NYISO has included it as an Incremental Regulatory Retirement, would be accounted for by reducing the Renewable Exemption Bank at the time that the Generator enters into an RMR Agreement. This approach, combined with the STRP, will ensure that Incremental Regulatory

Retirements do not include resource retirements that are temporarily retained under an RMR Agreement.

3. The Incremental Regulatory Retirements Proposal Is Practically Workable, Will Not Result in Excessive Litigation and Is Consistent with Commission Precedent

The Indicated NYTOs claim that the Compliance Filing’s proposed process for determining whether a given retirement is a “regulatory” retirement is administratively burdensome and unworkable, likely to result in litigation, and would place the MMU in an inappropriate role.⁴⁰

The Indicated NYTOs concerns regarding the proposed rules for identifying Incremental Regulatory Retirements are greatly exaggerated. The NYISO is not attempting to set up a “quasi-judicial process”⁴¹ for making such determinations and is not seeking to apply an “ambiguous and unworkable” standard. There are many provisions in the BSM Rules, and in other parts of the Services Tariff, that require the NYISO to make important substantive determinations based on its independent expertise and judgment.⁴² The Commission has also authorized, and in some cases directed, other ISOs/RTOs to make comparable decisions.⁴³

⁴⁰ Indicated NYTOs’ Protest at 9.

⁴¹ Indicated NYTOs Protest at 17.

⁴² Attachment H of the Services Tariff has many such provisions, all of which have been accepted by the Commission *See, e.g.*, Services Tariff Section 23.3.4.1.6.9 (requiring the NYISO jointly determine, in conjunction with the MMU, whether a Market Party has submitted inaccurate fuel type or fuel price information); Services Tariff Section 23.3.2.1 (requiring NYISO to make determinations of market impact thresholds); Services Tariff Section 23.2.2.2 (specifying NYISO’s responsibility to perform price impact analyses); Services Tariff Section 23.4.5.6 (giving the NYISO the authority to audit and make certain determinations regarding reclassifications of Generators in Mitigated Capacity Zones, and whether such reclassifications constitute physical withholdings).

⁴³ For example, in recent orders on PJM’s “Minimum Offer Price Rule,” the Commission ordered PJM to adopt a mitigation approach for any “State Subsidy,” and gave PJM very general guidance on what constituted such a subsidy. *Calpine Corporation, et al. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 at P 9 (2019), *order on reh’g.*, 171 FERC ¶ 61,034 (2020). In applying these standards, PJM will

These provisions have previously been found to be consistent with Commission precedent that ensures ISOs/RTOs do not exercise unfettered discretion.⁴⁴ There will be instances in which Incremental Regulatory Retirement classification decisions will be difficult, or controversial. But ISOs/RTOs are often called upon to make difficult decisions and are well-positioned to do so. The mere fact that the Compliance Filing would require the NYISO to differentiate between categories of retirements is not sufficient justification for modifying the NYISO's proposal to instead count all retirements under the Renewable Exemption Limit formula.

The proposed definition of Incremental Regulatory Retirements provides more than sufficient guidance and detail for the NYISO, the MMU, and, if necessary, the Commission to make reasonable and informed determinations regarding regulatory retirements. The definition is not self-implementing and does not provide explicit instructions addressing every imaginable fact pattern. Commission precedent does not require that ISO/RTO tariff definitions be drafted in a manner that allows their application to be perfectly mechanical.⁴⁵

have to make many determinations that are similar in scope to those that the NYISO will make, in consultation with the MMU, with respect to Incremental Regulatory Retirements.

⁴⁴ See, e.g., *TransSource, LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,119 at P 211 (2019) (“PJM is allowed discretion in how it models transmission capability when making simultaneous feasibility determinations” as part of interconnection process); *ISO New England Inc.*, 155 FERC ¶ 61,145 at P 8 (2016) (In setting Installed Reserve Margin, ISO-NE “does not have ‘unfettered discretion to set reserve margins and other critical wholesale capacity metrics.’ The Tariff circumscribes ISO-NE's authority by requiring ISO-NE to make its ICR modeling assumption and/or load forecast adjustments through the stakeholder process, and to propose its load forecast-related adjustments to its stakeholders and state utility regulators, and then to make annual FPA section 205 filings that include the ICR 90 days before the FCA.”); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 248 (2013) (permitting PJM to exercise discretion to determine whether to forego a competitive solicitation under Order No. 1000, as long as discretion is exercised in accordance with certain guiding principles; such principles “will place reasonable bounds on PJM’s discretion to determine whether there is sufficient time to hold a competitive solicitation for Immediate-need Reliability Projects and, as a result, will ensure that an exception from the requirement to eliminate a federal right of first refusal for reliability projects will be used in limited circumstances.”).

⁴⁵ See, e.g., *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,054 at P 30 (2020) (Proposed tariff language permitting the NYISO to adjust credit requirements based on “material adverse change” will allow NYISO the reasonable discretion to evaluate individual facts and circumstances, as

Similarly, the NYISO is not proposing a “novel and highly unorthodox” arrangement between itself and the MMU. Proposed new Section 23.4.5.7.13.5.3 requires the NYISO to “consult” with the MMU when “evaluating whether a newly enacted or amended regulatory action plays a significant role” in a retirement. This is the same kind of consultation that is provided for, and that routinely occurs, under numerous other provisions of the BSM Rules and other parts of the NYISO tariffs.⁴⁶ It is widely understood and wholly unremarkable that the NYISO would consult with the MMU in this area. It is also consistent with numerous other BSM Rule provisions for the MMU to post a report on its views.⁴⁷ The Commission has accepted these reporting requirements because they make the NYISO’s administration of the BSM Rules more transparent, which benefits all stakeholders.

The one new procedural feature in the Compliance Filing is the proposal that if the MMU and NYISO disagree on a retirement determination the matter is then to be submitted to the Commission for resolution. The new feature would recognize the importance of these

necessary, to protect the NYISO-administered markets without limiting NYISO to act only in specific scenarios of increased credit risk enumerated in the tariff. This discretion is present with respect to the material adverse change clause found in Section 26.14 of the Services Tariff. There, NYISO has a reasonable amount of discretion because it is neither practical nor productive for NYISO to define every single circumstance that could result in a material adverse change.”)

⁴⁶ See Services Tariff Section 23.4.5.4.3 (requiring NYISO to consult with MMU on projections of ICAP Spot Auction clearing prices in connection with calculation of physical withholding penalties); Services Tariff Section 23.4.5.6.1 (requiring NYISO to provide to MMU for review and comment results of audit of Market Participant decisions to remove or derate Installed Capacity from a Mitigated Capacity Zone); Services Tariff Section 23.4.5.7.2.5 (requiring NYISO to consult with MMU on price projections and cost calculations regarding application of certain MOPR exemptions); Services Tariff Section 23.4.5.7.3.8.2 (requiring the NYISO to consult with the MMU regarding inputs and methodology used to project net Energy and Ancillary Services revenues for UDRs); Services Tariff Section 23.4.5.7.8 (requiring NYISO to consult with the MMU prior to determining whether an existing or proposed Generator has Commenced Construction).

⁴⁷ See Services Tariff Section 23.4.5.7.6.8 (requiring MMU to provide report on NYISO Offer Floor exemption determinations); Services Tariff Section 23.4.5.7.9.4.2 (requiring MMU to provide report on NYISO Competitive Entry Exemption determinations); Services Tariff Section 23.4.5.7.10 (requiring MMU to provide report on certain exemption determinations).

decisions and provide stakeholders with even greater transparency. But this rule is really only new insofar as it formalizes the steps that would be followed under the currently effective Services Tariff if the MMU opposed a NYISO determination, *i.e.*, the MMU would refer the matter to the Commission. The Indicated NYTOs' objections are therefore unfounded.

Indicated NYTOs' substantially inflate the odds for extensive litigation. It is very likely that the consultative process between the NYISO and the MMU will lead to agreement in the vast majority of cases. Over the last decade, NYISO-MMU consultations involving other parts of the BSM Rules have rarely ended in disagreement. The very construct of consultation itself forces a dialogue and better understanding between both entities which helps lead to a constructive outcome. While disputes may occur from time to time, they are not likely to be so numerous as to undermine the administration of the BSM Rules.

The proposal would not impermissibly require the Commission to issue "advisory" opinions because any NYISO-MMU conflict brought to the Commission's attention would be a live controversy with tangible real-world implications. There is no problematic ambiguity regarding the form that a NYISO filing would take. If the Commission accepts the Compliance Filing, and there were a future NYISO-MMU conflict, then the NYISO would simply invoke Section 23.4.5.7.13.5.3 of the Services Tariff and ask the Commission to act thereunder. The NYISO is also clearly not attempting to dictate when the Commission must act. Specifying that the NYISO will not provide study results to stakeholders for approval until the Commission acts on such a filing simply provides predictability, certainty, and transparency to stakeholders.

The procedural proposal would not deprive any third party of its ability to raise concerns at the Commission about Incremental Regulatory Retirement decisions. The Commission has

previously acted on complaints regarding the NYISO's application of the BSM Rules and would presumably do so again if any arise in the future.

Finally, there is no merit to the Indicated NYTOs' suggestions that the MMU's role regarding Incremental Regulatory Retirement determinations would somehow be inappropriate or even inconsistent with Commission policy under Order No. 719. The NYISO's proposal does not grant the MMU "adjudicatory authority" or a "veto" over Incremental Regulatory Requirement determinations. It would not make the MMU responsible for administering any part of the Services Tariff. Rather, as outlined above, the NYISO proposal gives the MMU an advisory role, in a manner that is functionally no different from the other advisory roles played by the MMU under the NYISO tariffs.⁴⁸ The Commission has consistently authorized independent market monitors to perform the type of review function contemplated by the Compliance Filing.⁴⁹

⁴⁸ See, e.g., *New York Independent System Operator, Inc.*, 155 FERC ¶ 61,076 at P 89 (2016) (describing the NYISO's proposal, ultimately approved by the Commission, to have the MMU review owner-developed rates for RMR compensation, and to participate in FERC proceedings concerning such rates); *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,244 at P 130 (2012) (Requiring "a written report by NYISO's MMU confirming whether NYISO's mitigation and exemption determinations and calculations were conducted in accordance with the terms of the Services Tariff," and holding that the preparation of such a report "will increase participant confidence in the results of the tests.")

⁴⁹ For example, in *Southwest Power Pool, Inc.*, 165 FERC ¶ 61,026 (2018), the Commission evaluated and accepted a Southwest Power Pool, Inc. ("SPP") proposal to allow generators with mitigated start-up and mitigated no-load offers to recover certain maintenance costs through the SPP tariff on the condition that such costs were first submitted to the SPP MMU for "validation and approval prior to including the cost in the mitigated offer." The role of the MMU in the NYISO proposal also is functionally indistinguishable from the MMU's existing obligations to perform an evaluative review function in connection with a determination that is to be made by the NYISO under its tariffs. See Services Tariff Section 23.4.5.4.3 (requiring NYISO to consult with MMU on projections of ICAP Spot Auction clearing prices in connection with calculation of physical withholding penalties); Services Tariff Section 23.4.5.6.1 (requiring NYISO to provide to MMU for review and comment results of audit of Market Participant decisions to remove or derate Installed Capacity from a Mitigated Capacity Zone); Services Tariff Section 23.4.5.7.2.5 (requiring NYISO to consult with MMU on price projections and cost calculations regarding application of certain MOPR exemptions); Services Tariff Section 23.4.5.7.3.8.2 (requiring the NYISO to consult with the MMU regarding inputs and methodology used to project net Energy and Ancillary Services revenues for UDRs); Services Tariff Section 23.4.5.7.8 (requiring NYISO

B. The Compliance Filing’s Proposed URM Impact Rules Are Consistent with the Directives of the February 2020 Order, Just, Reasonable, and Not Unduly Discriminatory

1. There Is No Need to “Clarify” that the URM Impact Component of the Renewable Exemption Limit Formula Will Account for the Most Up-To-Date NYISO Processes

The IPPNY Protest asks that the Compliance Filing’s proposal be revised to establish that the Renewable Exemption granted to a renewable resource and any banking of exemption credits will reflect the NYISO’s expected future update⁵⁰ to its UCAP rating methodology.⁵¹ There is no need to make any tariff changes to address this point. The proposed URM impact tariff provisions will already incorporate future changes to the NYISO’s UCAP rating methodology. This would include the changes in the developing “Tailored Availability Metric” proposal in the event that it is submitted to, and ultimately accepted by, the Commission. It would also include any other changes to relevant inputs to the URM impact calculation. It would therefore be unnecessary and redundant to “clarify” the NYISO’s proposed tariff language further on this point.

2. The URM Impact Component Should Not Be Removed from the Renewable Exemption Limit Formula

The Ravenswood Protest argues that the URM impact component of the Renewable Exemption Limit formula is inherently flawed.⁵² It asserts that accounting for URM impact in

to consult with the MMU prior to determining whether an existing or proposed Generator has Commenced Construction).

⁵⁰ See, e.g., the NYISO’s April 29, 2020 presentation to the stakeholder Management Committee, “Tailored Availability Metric” (describing current state of proposal), available at <<https://www.nyiso.com/documents/20142/12157188/07%20Tailored%20Availability%20Metric.pdf/e3bc3f18-85c8-ca83-7298-976adc189914>>.

⁵¹ IPPNY Protest at 2, 11.

⁵² Ravenswood Protest at 21. The IPPNY Protest raises similar arguments but does not request the elimination of the URM impact component of the Renewable Exemption Limit formula.

the formula is only necessary because of other purported shortcomings in New York State Reliability Council and NYISO rules. As an alternative, Ravenswood would have the Commission direct the NYISO “to correct the issues inherent in the UCAP rating methodology itself and, potentially, the reserve margin model,” rather than rely indefinitely on the proposed URM impact value.⁵³ The Commission should not accept Ravenswood’s request. Modifying existing NYISO procedures so that they could be incorporated into the Renewable Exemption Limit formula in a way that satisfied Ravenswood is beyond the scope of this compliance proceeding. That scope is properly limited to establishing a Renewable Exemption Limit calculation methodology. It does not encompass efforts to improve or perfect the inputs that would be used in that calculation.

Moreover, the URM impact of renewables, as documented by the New York State Reliability Council, is not disputed by Ravenswood and is also a material consideration when determining whether the Renewable Exemption could significantly impact market prices. It is therefore reasonable and appropriate to include URM impact in the Renewable Exemption Limit formula. Further, the URM impact value is narrowly tailored and is appropriately limited to Qualified Renewable Exemption Applicants that accept their final binding interconnection study results. In the event that the NYISO and its stakeholders further revise the UCAP rating method of renewables, this would be incorporated into the URM impact calculation – the Services Tariff requires the NYISO to calculate the URM impact using renewable ICAP to UCAP conversion factors consistent with the underlying resource adequacy study. Thus, the Commission should disregard these Protests and accept the URM impact component of the Renewable Exemption Limit formula.

⁵³ *Id.*

The Commission should also reject Ravenswood’s allegation that the use of the URM impact component of the Renewable Exemption Limit formula will prevent capacity prices from rising to level where they would send a price signal to benefit wind, solar, and storage resources.⁵⁴ Ravenswood’s concern is equally applicable to every component of the Renewable Exemption Limit formula. Prices are likely to increase more without exemptions than they would with exemptions. The question is whether these price impacts, and other factors that affect Renewable Exemption Limit calculations have such a significant and one-sided impact that they render the formula as a whole unjust and unreasonable. The Compliance Filing’s proposals, including its approach to determining URM impact values strikes an appropriate balance between allowing the Renewable Exemption to cause either price increases or price decreases. The NYISO’s proposal, including the URM component, therefore limits the risk of significant price impacts that would result in prices outside the zone of reasonableness under the just and reasonable standard.⁵⁵ This will ensure that price signals are not suppressed in contravention of the February 2020 Order.⁵⁶

The Indicated NYTOs’ Protest claims that the Compliance Filing’s Renewable Exemption Limit formula is too conservative in that it improperly fails to account for “the impact of increases in UCAP requirements because the amount of UCAP purchased in the ICAP market is designed to exceed, and historically has on average materially exceeded, minimum ICAP

⁵⁴ See Ravenswood at 23.

⁵⁵ See *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 at P 48 (the key to fashioning the renewable energy exemption is limiting the “risk that the renewable resources exemption will significantly impact market prices and it is such limitation that makes this tariff revision just and reasonable.”

⁵⁶ *Id.*

requirements.”⁵⁷ The NYISO does not agree. Calculating the URM impact of Qualified Renewable Exemption Applicants using the reliability modeling that is used to establish the minimum ICAP requirements is a readily implementable, predictable, and transparent approach to further tailoring the Renewable Exemption Limit to the market dynamics in the Mitigated Capacity Zones.

The Indicated NYTOs have also clearly overstated the potential impact of their concern. It implicates a third order effect of the entry of renewable resources that cannot plausibly be expected to have an appreciable impact on prices. Specifically, renewable entry directly impacts prices by increasing the amount of supply in the market. Such entry also affects the URM which indirectly impacts price. Because the introduction of new renewables changes the URM, it could also have some small effect on the slope of the Installed Capacity Demand Curve which in turn affects ICAP prices. But there is no reason to believe that this indirect impact on the slope of the ICAP Demand Curve would have non-trivial price effects. Even by allowing such slight changes, capacity market prices will continue to fall within the required zone of reasonableness.⁵⁸

C. The Relationship Between the Renewable Exemption Limit Calculations in the New York City Locality and the G-J Locality Under the Compliance Filing’s Proposed Tariff Revisions Is Narrowly Tailored to the Market Conditions in these Mitigated Capacity Zones and Is Consistent with the NYISO’s Market Design

The IPPNY Protest and Ravenswood Protest both suggest that the NYISO should be prohibited from applying the Renewable Exemption Limit for the G-J Locality to renewable resources in New York City.⁵⁹ IPPNY complains that the NYISO will “address pro rata

⁵⁷ Indicated NYTOs’ Protest at 23.

⁵⁸ See *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 at P 48.

⁵⁹ See IPPNY Protest at 3, 13; Ravenswood Protest at 13.

allocation of the Renewable Exemption Limit sequentially. . . .”⁶⁰ which it claims would be contrary to the February 2020 Order’s directive that the Renewable Exemption Limit be “narrowly tailored” to conditions in individual Mitigated Capacity Zones. IPPNY argues that applying the G-J Locality Renewable Exemption Limit to renewable resources in New York City would cause the cumulative exemptions for New York City to exceed the Renewable Exemption Limit that the NYISO calculated for New York City.⁶¹ IPPNY is concerned that this interaction between the G-J Locality and New York City Locality calculations threatens to result in “excessive market price impacts” in New York City.⁶² It therefore proposes that “the amount of Renewable Exemption available to New York City renewable resources must be limited to the calculation of the New York City Renewable Exemption Limit. Any available G-J Renewable Exemption Limit must be limited to renewable resources located in the G-J Mitigated Capacity Zone.”⁶³ The Ravenswood Protest raises similar issues.⁶⁴

The NYISO disagrees that the relationship between Renewable Exemption Limit calculations in New York City and the G-J Locality violates the February 2020 Order. New York City has been treated as “nested” within the G-J Locality for all market design purposes since the latter Mitigated Capacity Zone was established. For example, the NYISO’s 2013 filing to create the G-J Locality explained that the Services Tariff would recognize that, “the Locality’s price could be set by the bids and offers within the Locality or could be determined by the larger

⁶⁰ IPPNY Protest at 14.

⁶¹ *See* IPPNY Protest at 15.

⁶² *Id.*

⁶³ *Id.* at 16.

⁶⁴ *See* Ravenswood Protest at 14.

Locality in which it is contained.”⁶⁵ The Commission has also rejected arguments that the nesting arrangement would impermissibly shift capacity costs from New York City to Load Zones G, H, and I.⁶⁶

Furthermore, this method is consistent with how the unit specific economic evaluation happens under the BSM Rules today. The “Part B Test”⁶⁷ compares an Examined Facility’s Unit Net Cost of New Entry (“CONE”) to its expected revenues over a three-year period. These revenues include a forecast of Energy and ICAP revenues. In times when the G-J Locality is expected to set the clearing price for Load Zone J (as it did in the market for all of 2018), ICAP prices for Load Zone J would be set from the G-J Locality requirements for that time period. A Load Zone J resource passing the Part B Test under this scenario is similar to the scenario that is being protested by IPPNY and Ravenswood.

Accordingly, it is unreasonable to claim that allowing New York City resources to obtain an exemption based on the G-J Locality Renewable Exemption Limit contradicts the February 2020 Order’s mandate that the limit be “narrowly tailored to the mitigated capacity zones.” The nesting relationship between New York City and G-J Locality has been a core market design feature for seven years.

⁶⁵ *New York Independent System Operator, Inc., Proposed Tariff Revisions to Establish and Recognize a New Capacity Zone and Request for Action on Pending Compliance Filing, Docket No. ER13-1380-000* (April 30, 2013), at 21.

⁶⁶ *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,126 at P 58 (2013).

⁶⁷ *See supra* at n. 25.

D. The NYISO's Existing Interconnection Queue Rules Are Sufficient to Incentivize Resources that Receive Renewable Exemptions to Move Forward in a Timely Manner

The IPPNY Protest and Ravenswood Protest assert that the NYISO's proposal raises the possibility that the same UCAP MWs in the Renewable Exemption Bank could potentially be granted to two separate generators if the generator to which those MWs are first granted does not use them in a timely manner.⁶⁸ They ask that the NYISO be required to adopt rules ensuring that a generator granted a Renewable Exemption will be required to move forward in a timely manner, and that the capacity associated with that exemption will not be granted to a second generator unless the first exemption has been revoked.

As an initial matter, adding new exemption revocation rules would be outside the scope of this proceeding.⁶⁹ The NYISO already has rules in place to prevent the type of duplicative exemption awards identified by IPPNY and Ravenswood. All determinations under the BSM Rules, including exemption determinations, are performed in parallel through the NYISO's interconnection process as part of the processing of each Class Year. The Class Year process culminates with the execution of an Interconnection Agreement among the generator, the Connecting Transmission Owner, and the NYISO.⁷⁰ At this point, the generator owner has demonstrated a substantial financial and technical commitment to the construction and operation of the project. The Interconnection Agreement includes project milestones leading up to completion of engineering, procurement and construction activities required for the project to go

⁶⁸ See IPPNY Protest at 12-13; Ravenswood at 20.

⁶⁹ The February 2020 Order directed the NYISO to develop the Renewable Exemption Limit and to add new due process protections to previously accepted Renewable Exemption revocation rules. It did not authorize the NYISO to revoke exemptions for new reasons.

⁷⁰ If the resource is in the Class Year for CRIS only and is not subject to NYISO's interconnection procedures for ERIS, the resource would only enter into a two-party interconnection agreement with the Connecting Transmission Owner.

into service. Delays in meeting milestones that impact the project's projected In-Service Date are subject to provisions of the Interconnection Procedures that limit permissible extensions of projected In-Service Dates. Thus, the risk of delay, or of untimely market entry, is already addressed by existing processes.⁷¹ There is no need to add new, and largely redundant, exemption revocation rules.

E. If the Commission Determines that the Compliance Filing's Proposal Should Be Improved, It Should Direct the NYISO to Develop Additional Enhancements Through Its Stakeholder Shared Governance Process But Should Not Delay Implementation of the Renewable Exemption for Class Year 2019

To the extent that the Commission nevertheless concludes that the Compliance Filing's proposed tariff revisions should be improved it should nevertheless conditionally accept the Compliance Filing. Doing so would allow the Renewable Exemption to be implemented without delaying Class Year 2019. Any further improvements, whether suggested in the Protests or arising elsewhere, could be effectively addressed through the NYISO's shared governance process.

The NYISO is already engaged in a comprehensive review of potential adjustments to the BSM Rules to better reflect changes in resource entry and retirement decisions that are expected to be driven by New York State law and policy in the coming decades. The NYISO refers to this initiative as "Comprehensive Mitigation Review" or "CMR." The CMR process would be well-suited to promptly address any additional enhancements that the Commission may direct the NYISO to pursue.

⁷¹ See OATT Sections 30.4.4 and 30.4.4.5 and 30.4.4.5.1.

III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and renews its request, notwithstanding the Protests, that the Commission accept the Compliance Filing's Renewable Exemption Limit formula as proposed. It continues to be imperative that the Renewable Exemption be in place by June so that Class Year 2019 may proceed on schedule. In the alternative, if the Commission believes that enhancements to the Renewable Exemption Limit formula are warranted it should accept the Compliance Filing as filed for implementation in Class Year 2019. The Commission could then separately order the NYISO to undertake discussions through its shared governance stakeholder process to develop further improvements.

Respectfully Submitted,

/s/ David Allen

David Allen

Senior Attorney

New York Independent System Operator, Inc.

Dated May 13, 2020

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9. All of the factual statements in the NYISO's Answer are true and accurate to the best of my knowledge, information, and belief.
10. This concludes my affidavit.

Respectfully Submitted,

/s/ Shaun Johnson

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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 May 2020.

/s/ Joy A. Zimmerlin

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