

May 27, 2021

By Electronic Delivery

Honorable Kimberly D. Bose Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: New York Independent System Operator, Inc. Compliance Filing Regarding Self Supply Exemption, Docket No. ER16-1404-\_\_\_**

Dear Secretary Bose:

In accordance with Ordering Paragraph (B) of the Commission’s April 29, 2021 *Order Accepting Compliance Filing in Part and Directing Further Compliance* in the above-captioned proceeding,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) submits this compliance filing.

The April 29 Order addressed a series of tariff revisions governing the NYISO’s Self Supply Exemption (“SSE”) under the NYISO’s buyer-side capacity market power mitigation rules (the “BSM Rules”).<sup>2</sup> The NYISO initially made a filing to establish the SSE in this docket in response to an order issued in 2015 that granted, in part, a complaint filed by the New York Public Service Commission and other New York State entities seeking to establish various exemptions under the BSM Rules.<sup>3</sup> In an order issued on February 20, 2020, the Commission accepted the NYISO’s compliance filing in response to the 2015 Order, and directed, among other things, that the NYISO make further revisions to the tariff provisions governing the SSE.<sup>4</sup> The NYISO submitted the SSE tariff revisions mandated by the February 2020 Order in December 2020 (as supplemented by errata filings in December 2020 and January 2021).

The April 29 Order accepted all of the NYISO’s proposed revisions to the SSE except for one – the definition of “Self Supply LSE.” In this filing, the NYISO submits further proposed revisions to that definition in accordance with the Commission’s directives.

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<sup>1</sup> *New York Independent System Operator, Inc.*, 175 FERC ¶ 61,081 (2021) (“April 29 Order”).

<sup>2</sup> The BSM Rules are set forth in Attachment H (Section 23) of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

<sup>3</sup> *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 (2015) (“2015 Order”).

<sup>4</sup> *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 (2020) (“February 20 Order”).

## **I. COMMUNICATIONS**

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## **II. LIST OF DOCUMENTS SUBMITTED**

The NYISO submits the following documents with this transmittal letter:

1. A blacklined version of the revisions to the Services Tariff proposed by this filing (“Attachment I”);
2. A clean version of the revisions to the Services Tariff proposed by this filing (“Attachment II”).

## **III. DESCRIPTION OF PROPOSED TARIFF REVISIONS**

### **A. Overview of the SSE**

The SSE was established based on the 2015 Order’s finding that:

[I]f a load serving entity, such as a municipality, cooperative, or single customer entity, self supplies the majority of its needed capacity, the amount of capacity it procures from the ICAP markets will be relatively small. Therefore, uneconomic entry would reduce the cost of procuring this portion by less than the cost of financing the uneconomic entry in the first place.<sup>5</sup>

The 2015 Order also concluded that a “self-supply exemption would serve to enable load serving entities to make decisions on the purchase of capacity that best meets their needs and to hedge

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<sup>5</sup> 2015 Order at P 61.

their exposure to future ICAP obligations based on their reasonable expectations for the future.”<sup>6</sup> Thus, the Commission directed the NYISO to propose an SSE that would be “limited to load serving entities whose ICAP portfolios are consistent with reasonably anticipated levels of their future ICAP obligations.”<sup>7</sup>

In April 2016, the NYISO submitted a filing to comply with the directives of the 2015 Order (“2016 SSE Filing”). In particular, the 2016 SSE Filing proposed to allow a load serving entity with “a self supply business model” to develop a new Generator or UDR project, to enter into a Long Term Contract for capacity from such a Generator or UDR project, or to acquire additional Capacity Resource Interconnection Service (“Additional CRIS”) without being subject to an Offer Floor under the BSM Rules as long as certain conditions – including satisfaction of a Net Short Threshold and a Net Long Threshold – were met. The NYISO’s proposal was aimed at granting an SSE only to resources that had limited or no incentive and ability to suppress capacity market prices for the portion of the capacity to be subject to the exemption.

The February 20 Order accepted in part, subject to condition and an additional compliance filing, the 2016 SSE Filing. The February 20 Order directed the NYISO to limit eligibility for Self Supply LSE status to the subset of Public Power Entities that are not public authorities or corporate municipal instrumentalities created by the State of New York. The February 20 Order also required the NYISO to make certain other changes to the SSE tariff provisions, including revisions to the types of long-term contracts that will be counted toward eligibility for an SSE, revisions to the Net Long and Net Short Thresholds, and changes to the process for revoking an SSE.

The NYISO’s subsequent compliance filing made the changes directed by the Commission. With respect to the SSE eligibility restriction directed by the February 20 Order, the NYISO proposed to modify the definition of Self Supply LSE in Section 23.2.1 of the Services Tariff to read:

[A] Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is (i) a municipally owned electric system that owns or controls distribution facilities and provides electric service, (ii) a cooperatively owned electric system that owns or controls distribution facilities and provides electric service, (iii) a “Single Customer Entity,” or (iv) a “Vertically Integrated Utility.” A Self Supply LSE cannot be an entity that is a public authority or corporate municipal instrumentality, including a subsidiary thereof, created by the State of New York that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at P 62.

The NYISO explained in its filing that this language – particularly the delineation of the various types of eligible self-supply entities in the first sentence, and the language in the second sentence that a “Self Supply LSE cannot be an entity that is a public authority or corporate municipal instrumentality . . . created by the State of New York” – allowed municipal electric utilities and cooperatively owned electric systems to remain eligible for the SSE, while explicitly excluding a public authority or corporate municipal instrumentality created by the State of New York. In this way, the NYISO proposed to comply with the directive in the February 20 Order to exclude public authorities or corporate municipal instrumentalities created by the State of New York.<sup>8</sup>

## **B. April 29 Order**

The April 29 Order accepted all of the proposed tariff revisions except for the definition of Self Supply LSE. The Commission accepted the “proposed definition of Self Supply LSE insofar as it proposes to include municipally owned electric systems.”<sup>9</sup> However, the Commission found that “the proposed definition could be interpreted to be internally inconsistent” because “as a matter of law, all municipalities in New York State are corporate municipal instrumentalities created by the State.”<sup>10</sup> For this reason, according to the Commission, municipally-owned electric systems that the Commission intends to be eligible for the SSE “could be considered entities ‘that [are] a public authority or corporate municipal instrumentality, including a subsidiary thereof, created by the State of New York that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public.’”<sup>11</sup> Thus, the April 29 Order directed the “NYISO to submit a further compliance filing within 30 days of the date of this order to clarify that municipally owned electric systems created by local governments are eligible for the self-supply exemption.”<sup>12</sup>

## **C. Proposed Revision to Definition of “Self Supply LSE”**

The NYISO proposes to “clarify that municipally owned electric systems created by local governments are eligible for the self-supply exemption” by making several minor changes to the definition of Self Supply LSE to eliminate any potential inconsistencies identified by the Commission in its April 29 Order. In the first sentence, the NYISO proposes to (1) modify the term “municipally owned electric system” with the phrase “that was created by an act of one or more local governments pursuant to the laws of the State of New York”; and (2) modify the term “cooperatively owned electric system” with the phrase “that was created by an act of one or more local governments pursuant to the laws of the State of New York or otherwise created pursuant to the Rural Electric Cooperative Law of New York [.]” These modifications clarify that

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<sup>8</sup> The NYISO continues to take no position on the merits of the Commission’s rationale for excluding such entities. It is only seeking to comply with the Commission’s orders.

<sup>9</sup> April 29 Order at P 34.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at P 35.

municipally owned electric systems and cooperatively owned electric systems that are established pursuant to local government actions are eligible for the SSE, even though the establishment of those entities ultimately is accomplished pursuant to New York law.

The second substantive modification to the definition of Self Supply LSE is the addition, at the end of the second sentence, of the clause “unless it meets the criteria provided in section (i), (ii), or (iii) of this definition.” The purpose of the second sentence is to exclude from eligibility for the SSE any “entity that is a public authority or corporate municipal instrumentality-created by the State of New York (including a subsidiary of such an authority or instrumentality) . . . .” The addition of the clause at the end of the second sentence recognizes that all municipally owned electric systems and cooperatively owned electric systems are, at bottom, created pursuant to New York law, and clarifies that the general exclusion for a public authority or corporate municipal instrumentality established by New York does not apply to the specific entities defined in the first sentence.

The NYISO is also proposing two minor clarifications to the definition that recognize that the laws governing municipal electric utilities in New York do not require these types of utilities to own distribution systems by replacing the “and” in the clause “controls distribution facilities and provides electric service” with “and/or” in both instances it is used in the definition.

The proposed revisions will include the entities that the Commission has ruled should qualify for a self supply exemption, including certain municipal electric utilities, cooperative electric utilities and single customer entities that also exist as public authorities or corporate municipal instrumentalities of the State while excluding the kinds of entities that the Commission has ruled should not be eligible for an SSE. That is, it will allow the self supply exemption to be available for entities with limited or no incentive and ability to suppress capacity prices if they meet the requirements of Section 23.4.5.7.14 of the Services Tariff. The revised Self Supply LSE definition continues to prevent State entities that the Commission has found with an incentive to act on behalf of the whole State and the ability to suppress prices by acting as self-supplying LSEs from obtaining an SSE<sup>13</sup> and avoids the potential internal inconsistency previously identified by the Commission. The revised definition should therefore be accepted.

#### **IV. EFFECTIVE DATE**

The NYISO respectfully requests that the Commission grant an effective date for the tariff revisions set forth in this compliance filing of February 20, 2021, which is the same effective date that the Commission accepted in the April 29 Order for the tariff revisions submitted in the December 2020 compliance filing.

#### **V. SERVICE**

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, to the official representative of each of its customers, to each participant

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<sup>13</sup> See, e.g., *New York Independent System Operator, Inc.*, 172 FERC ¶ 51,258 at PP 14-15 (2021).

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on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

## VI. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the compliance tariff revisions proposed in this filing and make them effective as of February 20, 2021.

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