

April 13, 2016

Hon. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: *New York Public Service Commission, et al. v. New York Independent System Operator, Inc., Compliance Filing and Request for Commission Action within Sixty Days, Docket Nos. EL15-64-00\_, ER16-\_\_\_\_-000***

Dear Secretary Bose:

In accordance with Paragraphs 10, 36, 47, 51 and 61-62 of the Commission's October 9, 2015 order (the "Order"),<sup>1</sup> and March 14 *Notice of Extension of Time*, the New York Independent System Operator, Inc. ("NYISO") respectfully submits proposed compliance revisions to its Market Administration and Control Area Services Tariff ("Services Tariff"). In accordance with Paragraph 10 of the Order, the NYISO requests that the Commission accept its proposed compliance revisions with an effective date of October 9, 2015.

Moreover, for the reasons discussed below in Section V the NYISO also requests that the Commission issue an order accepting this compliance filing within sixty days, *i.e.*, by June 13, 2016. Action is needed to give the NYISO sufficient time to implement the proposed exemptions in advance of an applicable deadline that may be established in August 2016.

The Order directed the NYISO to revise the buyer-side capacity market power mitigation measures ("BSM Rules") to exempt certain narrowly defined renewable and self-supply resources from Offer Floor<sup>2</sup> mitigation.<sup>3</sup> The Commission concluded that applying buyer-side market power mitigation to such resources was unnecessary to the extent that they have "limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices."<sup>4</sup> In accordance with the Order, this compliance filing includes proposed compliance tariff revisions that were developed with input from the NYISO's stakeholders.

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<sup>1</sup> *New York Public Services Commission, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 (2015).

<sup>2</sup> Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in the Services Tariff, and if not defined therein, then the meaning specified in the Open Access Transmission Tariff.

<sup>3</sup> The BSM Rules are set forth in Section 23.4.5.7, *et seq.* of the Services Tariff.

<sup>4</sup> Order at P 36.

## I. DOCUMENTS SUBMITTED

The NYISO respectfully submits this filing letter and the following documents:

- A. A clean version of the proposed revisions to Services Tariff (“Attachment I”);
- B. A redlined version of the proposed revisions to Services Tariff (“Attachment II”);
- C. Affidavit of Julia N. Popova, PhD (“Popova Affidavit”) (“Attachment III”);
- D. “Wind and Solar Analysis.xlsx” report (“Attachment IV”);
- E. Affidavit of Nicole Bouchez, PhD (“Bouchez Affidavit”) (“Attachment V”);
- F. A clean version of the proposed revisions to Services Tariff Section 23 (“Attachment VI”); and
- G. As an informational exhibit only, a blacklined version showing the proposed tariff revisions in relation to pending compliance filing revisions, and other revisions proposed pursuant to Section 205 of the Federal Power Act.<sup>5</sup> (“Attachment VII”)

## II. BACKGROUND

The BSM Rules are currently applicable in Mitigated Capacity Zones to all proposed new Generators and UDR projects<sup>6</sup> and existing Generators and UDR projects that seek to increase

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<sup>5</sup> Attachment I and Attachment II do not reflect language that is accepted but not yet effective in *New York Independent System Operator, Inc.*, Delegated Letter Order, Docket No. ER16-959-000 (Mar. 22, 2016) (accepting revisions to Services Tariff Section 23.4.5 and Section 30.4.6.2.12) (the “UDR Order”). The UDR Order also accepted the NYISO’s request for a flexible effective date, subject to a compliance requirement solely to establish that date, which would fall after the October 9, 2015 effective date proposed for this compliance filing.

Also to facilitate the filing of the etariff, Attachment I and Attachment II do not reflect revisions proposed in: (a) New York Independent System Operator, Inc., *Proposed Amendments to the NYISO Open Access Transmission Tariff and Market Administration and Control Area Services Tariff to Incorporate Behind-the-Meter Net Generation Resources into the NYISO’s Energy, Ancillary Services and Capacity Markets*, Docket No. ER16-1213-000 (Mar. 17, 2016) (the “BTM:NG Revision Filing”.) As described in Par IV of the BTM:NG Revision Filing (pp. 60-62) certain revisions proposed therein to Sections 23.2.1 and 23.4.5.7 that relate to matters described herein but would not alter this proposal, have a proposed effective date of May 19, 2016. (b) the compliance tariff revisions filed in New York Independent System Operator, Inc., *Compliance Filing*, Docket No. ER16-120-000 (October 19, 2015) (the “Reliability Must Run” filing, with a requested effective date of October 20, 2015).

<sup>6</sup> The BSM Rules refer to these projects as “UDR facilities” and “UDR projects,” interchangeably. In the UDR Order, the Commission accepted the NYISO’s proposal to conform the use of these two terms to only use the term “UDR projects,” with a flexible effective date. Those proposed revisions will be effective two weeks after the completion of Class Year 2015, subject to the NYISO making a compliance filing to reflect that status and that effective date.

their Capacity Resource Interconnection Service (“Additional CRIS”), through a request for CRIS in the Class Year.<sup>7</sup> They also apply to expected recipients of transferred CRIS at the same location, when the ISO has been notified, by the transferor or the transferee, of a transfer pursuant to OATT Attachment S Section 25.9.4 that will be effective on a date within the Mitigation Study Period for the Class Year. These projects are defined in the BSM Rules as “Examined Facilities” and “NCZ Examined Projects.” Under the BSM Rules, Installed Capacity Suppliers that are not exempt are subject to an Offer Floor. A Generator or UDR project is exempt if it “passes” one of two tests set out in Section 23.4.5.7(a) and (b) of the Services Tariff. These tests are commonly referred to as the “Part A” and “Part B” tests. A Generator or UDR project may also be exempt if it receives a competitive entry exemption under Section 23.4.5.7.9.

The Complaint proposed several modifications to the BSM Rules. The NYISO supported in part the Complaint’s proposal that some form of renewable exemption be established and did not oppose in principle the creation of a properly structured self-supply exemption.

The Order rejected many of the Complaint’s proposals but found that the current BSM Rules are unjust and unreasonable to the extent that they apply to renewable and self-supply resources that have “limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.”<sup>8</sup> The Commission instructed the NYISO to create “narrowly defined” exemptions under the BSM Rules for such resources.

The Order gave the NYISO general guidance concerning the parameters of the two new exemptions. It left the NYISO with substantial flexibility to work with its stakeholders to develop the details and to propose them in this filing. The NYISO has incorporated the Commission’s guidance, and stakeholder input, into the compliance tariff language proposed in this filing and described in Section III below. The NYISO discusses its perspective on certain alternative stakeholder proposals in those sections.

Accordingly, the NYISO is making this filing to modify its Services Tariff to implement a “Renewable Exemption” and a “Self Supply Exemption” under the BSM Rules.

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

#### **A. Proposed Tariff Language Implementing Renewable Resource Exemption**

The Order stated that the NYISO’s proposed Renewable Exemption:

[S]hould be limited to renewable resources that are both purely intermittent and that have relatively low capacity factors and high development costs because these resources have limited or no incentive and ability to artificially suppress

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<sup>7</sup> The NYISO notes that Section 23.4.1 of the Services Tariff provides that “[t]erms with initial capitalization not defined in Section 23.4 shall have the meaning set forth in the Open Access Transmission Tariff.”

<sup>8</sup> Order at PP 47 and 61.

capacity prices. In addition, the exemption should limit the total amount of such renewable resources—in the form of a megawatt cap—that may receive the exemption, to further limit any risk that these exempted resources will impact NYISO’s ICAP market prices.<sup>9</sup>

In its Rehearing Order, the Commission reiterated that the Renewable Exemption should be limited in scope.<sup>10</sup>

## **1. Generators Eligible to Request a Renewable Exemption**

The NYISO is proposing to make Generators solely powered by technologies that could meet the Services Tariff definitions of “Intermittent Power Resource”<sup>11</sup> or “Limited Control Runof-River Hydro Resource”<sup>12</sup> eligible to request a Renewable Energy Exemption. Examined Facilities and NCZ Examined Projects that are proposed with a design that would fall under (or, if Additional CRIS, that already are designed in a way that falls under) one of those categories and request an exemption request are referred to in the proposed compliance tariff revisions as “Renewable Exemption Applicants.”

The NYISO proposal leverages existing tariff provisions that establish objective criteria for identifying technologies that are both intermittent and renewable. The NYISO already has various market rules that recognize and accommodate the characteristics of intermittent and renewable resources. For example, the “Intermittent Power Resource” definition contains requirements that a resource be renewable and intermittent. The “Limited Control Run-of-River Hydro Resource” definition requires that the facility’s output depends on river flows over which the Generator has limited control. Thus, restricting eligibility for a Renewable Exemption to

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<sup>9</sup> Order at P 51.

<sup>10</sup> *New York Public Services Commission, et al. v. New York Independent System Operator, Inc.*, 154 FERC ¶ 61,088 (“Rehearing Order”) at P 12 (2016).

<sup>11</sup> “Intermittent Power Resource” is defined in the Services Tariff as “[a] device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. In New York, resources that depend upon wind, solar energy or landfill gas for their fuel have been classified as Intermittent Power Resources. Each Intermittent Power Resource that depends on wind as its fuel shall include all turbines metered at a single scheduling point identifier (PTID).” Services Tariff Section 2.9. *See New York Independent System Operator, Inc.*, 146 FERC ¶61,208 at P 32 (2014) (accepting current version of the NYISO’s definition of “Intermittent Power Resource” as a substitute for the “Variable Energy Resource” terminology the NYISO would otherwise have been required to adopt under Order No. 764.) *See also Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh’g*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on reh’g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

<sup>12</sup> “Limited Control Run-of-River Hydro Resource” is defined in the Services Tariff as “[a] Generator above 1 MW in size that has demonstrated to the satisfaction of the ISO that its Energy production depends directly on river flows over which it has limited control and that such dependence precludes accurate prediction of the facility’s real-time output. Services Tariff Section 2.12.

Intermittent Power Resources and Limited Control Run-of-River Hydro Resources is a reasonable minimum threshold requirement.

Because Resources with these designations are already recognized as having unique operating characteristics which reduce or eliminate control over their output, the Tariff has special rules in order to integrate them into the ISO Administered Markets. The current definitions and special rules align with the criteria described in the Order to identify the set of resources the Commission was seeking to exempt. For example, they are subject to special bidding and scheduling rules,<sup>13</sup> are not subject to persistent undergeneration charges, and receive greater compensation for overgeneration.<sup>14</sup> Moreover, the Commission expressly looked to the existing NYISO tariff provisions when it described the kind of “intermittent renewable resources” that should be eligible for a Renewable Exemption.<sup>15</sup>

Some stakeholders expressed concern that the process of adding new technologies to the definition of Intermittent Power Resource (or Limited Control Run-of-River Resource) might be a lengthy process and hamper efforts to obtain a Renewable Exemption. To address this concern, the NYISO’s tariff proposal would allow technologies that the NYISO reasonably expects to be included in either of those definitions at the time that the Generator or Additional CRIS MW is first qualified as an Installed Capacity Supplier to receive an exemption.<sup>16</sup> The proposed tariff also provides that if the exemption were granted on that basis, the exemption would be revoked if the technology is not within the definition of an Intermittent Power Resource or Limited Control Run-of-River Resource at the time it is first qualified as an Installed Capacity Supplier.<sup>17</sup>

Some stakeholders suggested that UDR projects that transmit intermittent renewable energy should also be eligible to request a Renewable Exemption. The NYISO did not adopt this suggestion. This prohibition is consistent with the Order’s requirement that a Renewable Exemption only be available to resources that are both intermittent and renewable. The Part A Test and Part B Test in the BSM Rules used by the NYISO to evaluate whether a UDR project can be used to suppress capacity market prices do not examine the cost of new entry of the generators outside of a Mitigated Capacity Zone that might be coupled with the UDR project to offer capacity at the project’s terminus in the Mitigated Capacity Zone. Likewise, an Offer Floor is imposed on offers using the UDR project and not to the coupled generators external to the Mitigated Capacity Zone. Moreover, controllable transmission lines do not inherently possess the attributes of being intermittent and renewable.

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<sup>13</sup> See, e.g., Section 5.12.1.6 under which Intermittent Power Resources that depend on wind or solar as their fuel do not have a Day-Ahead Market bidding obligation.

<sup>14</sup> See, e.g., Services Tariff Sections 15.2A.2.1, 15.3.A.1.1, 15.3A.3.

<sup>15</sup> See Order at n. 116; Rehearing Order at n. 9.

<sup>16</sup> See Section 23.4.5.7.1.13.1(a).

<sup>17</sup> See Section 23.4.5.7.1.13.3.1.

The NYISO's proposed compliance revisions would also make it clear that a Generator will not be eligible to request a Renewable Exemption if it applies for a Competitive Entry Exemption in the same Class Year.<sup>18</sup> This prohibition is appropriate because the rationales underlying the two exemptions are inconsistent. To be eligible for a Renewable Exemption, the premise is that the resource is costly and will have a low capacity factor. The focus of a Competitive Entry Exemption determination is on ensuring that an entrant is "truly competitive," *i.e.*, wholly reliant on the market for profitability, and thus does not have the ability or incentive to suppress capacity prices. In any event, as discussed in the Popova Affidavit, renewable resources often receive support that would make them ineligible to receive a Competitive Entry Exemption; *i.e.*, they have non-qualifying contractual relationships.<sup>19</sup> In fact, in order to satisfy the requirement that they have "high development costs," they would need to rely on that support, and not just market revenues, for profitability.

## **2. Initial and Periodic Determination of "Exempt Renewable Technologies"**

The NYISO is proposing to revise Services Tariff Section 23.2.1 to add an initial definition of "Exempt Renewable Technology" that will apply as of the proposed October 9, 2015 effective date of this filing. It is also proposing a new Section 23.4.5.7.13.2 to govern the periodic review and, if warranted, modification of what constitutes an Exempt Renewable Technology.

Initially, "Exempt Renewable Technology" would be defined for all Mitigated Capacity Zones as, "an Intermittent Power Resource solely powered by wind or solar energy." The NYISO has concluded that this subset of Intermittent Power Resources should qualify based on the "Wind and Solar Analysis" which is described in the Popova Affidavit. The NYISO is not proposing to include any other Intermittent Power Resource technology types or Limited Control Run-of-River Hydro Resources within the definition of Exempt Renewable Technology at this time. As noted in the Popova Affidavit, the economic attributes of such resources vary so that the NYISO could not support an assertion that all such resources would necessarily lack the incentive or ability to suppress capacity prices. Intermittent Power Resources and Limited Control Run-of-River Hydro Resources that do not qualify for Exempt Renewable Technology treatment, could, however, qualify for a Renewable Exemption based on the NYISO's determination pursuant to its analysis described in Section A.3 below.

The NYISO's proposed definition of "Exempt Renewable Technology" is supported by the "Wind and Solar Analysis" which is described in the Popova Affidavit. That definition would become effective, along with the rest of the NYISO's proposed compliance revisions as of October 9, 2015. It would be available to eligible projects in the current Class Year, *i.e.*, Class Year 2015, and would remain in effect until such time it was modified through the NYISO's periodic review process. Proposed new Section 23.4.5.7.13.2 provides for the definition of

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<sup>18</sup> See, e.g., 23.4.5.7.1.13.1.

<sup>19</sup> See 23.4.5.7.9.1 - 23.4.5.7.9.1.2.

“Exempt Renewable Technology” to be periodically reconsidered and, if warranted based on the periodic review, modified. The NYISO would conduct this review every ICAP Demand Curve Reset Filing Year after 2016; *i.e.*, it would not conduct a period review of the definition during the ICAP Demand Curve review that is currently underway.<sup>20</sup>

It is reasonable to link the periodic review of Exempt Renewable Technologies to the ICAP Demand Curve reset cycle. First, the “Exempt Renewable Technology” definition should be revisited at regular intervals. Future changes in costs, technology, or market conditions could materially change the assumptions upon which the Wind and Solar Analysis rests. Other existing or new renewable and intermittent technologies may be added to the definition of Intermittent Power Resource (or Limited Control Run-of-River Resource) in the future and thus would warrant evaluation as a potential Exempt Renewable Technology.<sup>21</sup>

The NYISO must therefore ensure that the definition continues to be valid and is neither excluding technologies that have been shown to have limited or no incentive or ability to suppress capacity prices, nor including technologies that have such incentive or ability. Second, the ICAP Demand Curves will be a principal input into any analysis of what should constitute an “Exempt Renewable Technology” since they are a key part of determining whether a particular technology can be used to suppress prices. Accordingly, it is appropriate to conduct Exempt Renewable Technology reviews after the Commission accepts reset curves. Third, the periodicity of the ICAP Demand Curve reset process reasonably balances developers’ need for predictability and the likely pace of technological change.

Some stakeholders argued for a more frequent evaluation period. The NYISO believes that a shorter period could create uncertainty and instability. It would also result in the NYISO and stakeholders having to do unnecessary work given the likely rate at which renewable energy technologies can be expected to advance or their cost of entry vary.

Under proposed Section 23.4.5.7.13.2 the NYISO’s periodic review would identify “which technology types that are Intermittent Power Resources or Limited Control Run-of-River Hydro Resources” are technologically feasible and have limited or no incentive to suppress capacity market prices. The NYISO would designate each technology with limited or no incentive to suppress capacity market prices as an “Exempt Renewable Technology for Class

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<sup>20</sup> Under the current Services Tariff rules, the ICAP Demand Curves are reviewed triennially; therefore, the first periodic review under the proposed provision would occur in 2019, with a NYISO filing pursuant to Section 23.4.5.7.13.2.4 in 2020. *See* Services Tariff Section 5.14.1.2. On March 30, 2016, the NYISO’s Management Committee recommended to the NYISO’s Board of Directors that the NYISO file with the Commission pursuant to Section 205 of the Federal Power Act tariff revisions to conduct an ICAP Demand Curve review every 4 years, and for the ICAP Demand Curves to be updated each Capability Year based on certain inputs.

<sup>21</sup> *See* Section 23.4.5.7.13.2.1(a).

Years with a Class Year Start Date during the Capability Years covered by the ICAP Demand Curve periodic review conducted for the relevant ICAP Demand Curve Reset Filing Year.<sup>22</sup>

Under proposed new Section 23.4.5.7.13.2.1(a), the NYISO first would identify “candidate intermittent renewable technologies.” These are the technologies that the NYISO would review for eligibility to be an Exempt Renewable Technology. The candidate intermittent renewable technologies also have to be technically feasible in the ISO-Administered Markets. The purpose of the feasibility requirement is to ensure that there would be a firm foundation for determining whether the cost of entry for the technology can be estimated and whether the costs, revenues, and capacity factor of projects having that technology can be predicted with confidence. When it is clear that a technology can be expected to have a low capacity factor and high development costs then it should be an “Exempt Renewable Technology” (rather than a technology for which the NYISO’s would make an individual determination for each project based on its own costs and capacity factor.

Some stakeholders argued that the tariff proposal should be designed so that any intermittent and renewable technology would be given the same treatment as an Exempt Renewable Technology; for example, a demonstration project still in the research and development stage. The NYISO, however, concluded that such projects likely would not have reasonably predictable project designs, project costs, capacity factors, and/or Energy and Ancillary Service revenues and thus should not be included in the definition of “Exempt Renewable Technology.” Projects powered by technologies that are not technically feasible to be deployed and participate in the wholesale market and that would not qualify as either an intermittent Power Resource or a Limited Control Run-of-River Hydro Resource could, like all other Intermittent Power Resources and Limited Control Run-of-River Hydro Resources, apply for a case-specific renewable exemption pursuant to the test described in Section A.3 below.

Under proposed new Section 23.4.5.7.13.2.1(b), for each candidate renewable technology, as part of the periodic review, the NYISO would consider the cost of new entry and costs to operate, all potential market revenues, and potential cost savings to Loads due to capacity market price reductions resulting from new entry by the candidate technology. These factors were considered in the Wind and Solar Power Analysis. Consistent with the Order, under new Section 23.4.5.7.13.2.2 the NYISO would use this information to determine which candidate technologies had high development costs and low capacity factors such that they had limited or no incentive or ability to suppress prices.

Proposed new Section 23.4.5.7.13.2.3 states that the NYISO’s periodic review would provide for stakeholder review of the NYISO’s preliminary identification of candidate intermittent renewable technologies, , and for the NYISO’s issuance of a draft list of Exempt Renewable Technologies for further stakeholder and Market Monitoring Unit (“MMU”) input.<sup>23</sup>

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<sup>22</sup> See 23.4.5.7.13.2.1.

<sup>23</sup> The NYISO is also proposing revisions to Section 30.4.6.2.12 to reflect the Market Monitoring Unit’s role under this provision.



Under Section 23.4.5.7.13.2.4, the NYISO would file the results of its periodic review within 60 days of the Commission's acceptance of ICAP Demand Curves based on the ICAP Demand Curve periodic review. If the NYISO's review determined that changes to the tariff definition of "Exempt Renewable Technology" were needed, it would propose them in that filing.

### **3. NYISO Analysis of Individual Renewable Exemption Requests**

Generators that seek a Renewable Exemption but that are not solely powered by Exempt Renewable Technology will be subject to a case-specific NYISO review of their exemption request. The case-specific test is described in proposed new Section 23.4.5.7.13.1.1(a). A Generator shall be eligible for the exemption if the NYISO determines, in accordance with ISO Procedures, that the Generator has high development costs, and a low capacity factor such that there would be limited or no incentive and ability to develop it in order to artificially suppress capacity prices. The ISO will make this determination by evaluating all pertinent factors including whether the reasonably projected cost of new entry and of operating the proposed new Generator or Additional CRIS MW are higher than the sum of: (i) the likely projected revenues from the sale of Capacity, Energy and Ancillary Services, and any other generally available revenues associated with the production of energy by it; and (ii) the reasonably estimated cost savings to Loads due to a reduction in UCAP Market-Clearing Prices from the entry of the proposed new Generator or Additional CRIS MW.

Conducting a case-specific analysis of Renewable Exemption Applicants that are not powered solely by an Exempt Renewable Technology is necessary for compliance with the Order. By definition, it is not reasonable to automatically presume that such Generators lack the incentive or ability to suppress prices. The NYISO must therefore consider whether they should receive an exemption on a case-specific basis.

Some stakeholders suggested that the NYISO make certain tariff provisions more detailed and prescriptive. For example, they suggested that the NYISO more specifically define what is meant by "low" capacity factors or "high" development costs. The NYISO does not believe that this would be necessary or appropriate. "Low" capacity factors and "high" costs must necessarily be measured in relation to the incentive to suppress capacity prices. These terms cannot be practicably defined for all potential projects covered by a generally applicable tariff because of the wide variability among project types and potential market conditions at the time the analysis is conducted. The proposed tariff provides a clear framework for the analysis, and the NYISO must be afforded reasonable flexibility to exercise its independent and expert judgment within it.

Certain stakeholders argued that the NYISO's proposal to perform individual renewable exemption requests is inconsistent with language in the Order suggesting that "intermittent renewable resources should not be subject to the mitigation exemption test in the first place."<sup>24</sup>

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<sup>24</sup> Order at P 48.

This single reference cannot reasonably be construed to outweigh the Order's numerous statements that the Renewable Exemption be limited to "certain" and "narrowly defined" renewables. In particular, the Order's suggestion that intermittent renewables "not be subject to the mitigation exemption test" is immediately followed by an acknowledgement that other renewables resources will continue to be "subject to the mitigation exemption test, due to the narrow construction of the exemption approved in this order."<sup>25</sup>

#### **4. 1,000 MW Limitation on Renewable Exemptions in a Single Class Year**

As noted above, the Order specified that the NYISO's Renewable Exemption "should limit the total amount of such renewable resources—in the form of a megawatt cap—that may receive the exemption, to further limit any risk that these exempted resources will impact NYISO's ICAP market prices."<sup>26</sup> The NYISO conducted an analysis and determined that the maximum amount of MW that should be eligible for a Renewable Exemption in any one Class Year is 1,000 MW of Installed Capacity. The analysis demonstrated that allowing this quantity of MW to be eligible for a Renewable Exemption in a given Class Year is reasonable because it would not be likely to result in the artificial suppression of capacity prices in existing Mitigated Capacity Zones. The NYISO's rationale for proposing the 1,000 MW of ICAP cap is discussed below and in the Bouchez Affidavit.

Because the proposed Renewable Exemption would only apply to Generators with high development costs and low capacity factors such that they have limited or no incentive to artificially suppress capacity prices, the principal function of the MW cap will be to serve as a safeguard against unanticipated events and conditions. It should therefore be set at a level low enough to serve that function but high enough to avoid needlessly impeding the entry of renewable resources. The NYISO believes that its proposed 1,000 MW cap strikes a proper balance between these objectives.

In order to confirm that the proposed cap was not too low the NYISO began its analysis by reviewing its current Interconnection Queue to assess the level of intermittent renewable projects that could reasonably be expected to be developed in the near future. The review accounted for the practical complexities of predicting which entrants would join a given Class Year. It looked to in-service dates to determine how many MWs of projects might enter a Class Year. The analysis indicated that it was reasonable to expect that more than approximately 1,000 MW of ICAP of renewables would be unlikely to enter in the Mitigated Capacity Zones in a given Class Year.

In order to confirm that the proposed cap was not too high, the NYISO examined levels of new entry over the last ten years for which information is currently available (*i.e.*, 2005-2014)

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<sup>25</sup> *Id.*

<sup>26</sup> *See supra* at n. 10.

using data from the 2015 “Gold Book.”<sup>27</sup> On average, there have been 680 MW per year of total new entry New York Control Area (“NYCA”) wide.<sup>28</sup> The lowest annual entry was 17 MW in 2014, while the greatest entry was 1,458 MW in 2006. It is reasonable to anticipate that the future entry of intermittent renewables in Mitigated Capacity Zones would not exceed past entry levels for all resource types NYCA wide. Over the same period, there has been very little new entry in the Mitigated Capacity Zones with the only entry being in New York City (Load Zone J). In that period, there has been a total of 2,758 MW of new entry in Load Zone J. This corresponds to an average entry of 276 MW per year, none of which was from renewable resources. This Load Zone J entry occurred over 4 years at levels ranging from 1,216 MW in 2006 and to 370 MW in 2005 and six years with no entry at all.

Although the past is not necessarily predictive of the future, past entry does help to define a reasonable cap level for Mitigated Capacity Zones. Information regarding past entry illustrates the variability of entry in New York. It clearly suggests that if, in the future, intermittent and renewable resources come to provide the majority of new entry, setting the cap much below 1,000 MW may unnecessarily constrain such resources. It therefore is reasonable to expect that a cap lower than approximately 1,000 MW of ICAP of renewables for a given Class Year might needlessly limit the entry of such resources and thus that the proposed cap is not too high.

In short, the NYISO’s review of the Interconnection Queue showed that more than 1,000 MW of renewable ICAP entry in a given Class Year is unlikely. At the same time, the NYISO’s review of Gold Book data on past entry indicated that setting the Renewable Exemption cap lower than 1,000 MW would probably be unreasonably restrictive. Accordingly, the proposed 1,000 MW cap is a reasonable safeguard against unanticipated conditions. It reasonably balances the need to prevent capacity market price suppression against the need to avoid unnecessary restrictions on entry by intermittent renewables that lack the ability or incentive to suppress prices. The NYISO considered other possible ways to determine a reasonable level for the MW cap. Some stakeholders suggested that the cap be tied to load growth, or a variation of a load growth factor. The NYISO decided, however, not to take this approach because in the NYCA Load growth can vary over time, and the development of renewables may be unrelated to Load growth given the potential that they will replace existing non-renewable resources. Therefore, the NYISO believes that using Load growth is not appropriate for the ISO Administered Markets.

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<sup>27</sup> The 2015 “Gold Book” is available on the NYISO’s web site at: [http://www.nyiso.com/public/webdocs/markets\\_operations/services/planning/Documents\\_and\\_Resources/Planning\\_Data\\_and\\_Reference\\_Docs/Data\\_and\\_Reference\\_Docs/2015%20Load%20and%20Capacity%20Data%20Report.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2015%20Load%20and%20Capacity%20Data%20Report.pdf) and the list of generation facility is available at: [http://www.nyiso.com/public/webdocs/markets\\_operations/services/planning/Documents\\_and\\_Resources/Planning\\_Data\\_and\\_Reference\\_Docs/Data\\_and\\_Reference\\_Docs/2015%20NYCA%20Generating%20Facilities.xls](http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2015%20NYCA%20Generating%20Facilities.xls).

<sup>28</sup> See Table 2 in the Bouchez Affidavit for the Existing Generating Facilities by Year of InService Date and by Load Zone (2005-2014).

Other stakeholders recommended using a backward looking analysis based on past entry of wind and solar Generators in Mitigated Capacity Zones. The NYISO did not believe that this would be a useful model because there have been no new wholesale Intermittent Power Resources or Limited Control Run-of-River Hydro Resources added have entered the Mitigated Capacity Zones from 2005 through 2015. There have been new Intermittent Power Resources or Limited Control Run-of-River Hydro Resources in other Load Zones; however, it is not clear how such entry is predictive of future intermittent renewable entry in Mitigated Capacity Zones.

The 1,000 MW limitation would be established by proposed new Section 23.4.5.7.13.1.1(b). Under that provision, if more than 1,000 MW of ICAP would otherwise be eligible for a Renewable Exemption in a given Class Year, then each eligible Generator would have a portion of its requested CRIS MW or Additional CRIS MW exempted. The portion would equal to the proportion of its requested amount to the total Installed Capacity MW of all MW determined to be eligible for that Class Year so that the 1000 MW cap is not exceeded.

In the stakeholder process there were extensive discussions on whether the cap should be in MW of ICAP or in MW of Unforced Capacity (“UCAP”). Some stakeholders suggested that the cap be established in terms of “UCAP instead of ICAP. For the reasons set forth below and in the Popova Affidavit, the NYISO disagrees and believes that an ICAP based cap provides a transparent, certain, and simple signal to market participants.

An ICAP based cap will provide potential developers, LSEs, and other Market Participants with reliable and transparent information. Because the NYISO’s proposal provides for it to post on its web site a list of Renewable Exemption Applicants at a relatively early stage in the Class Year process, stakeholders will be well positioned to evaluate for their own purposes whether the 1,000 MW cap will be exceeded in a given Class Year, and to consider the implications.

An ICAP based cap would retain consistency between the Renewable Exemption and other BSM exemptions. Under all of the other BSM Rules, it is a project’s CRIS MW, which is in ICAP terms, that are determined to be either exempt or not exempt. The NYISO’s proposal would have the Renewable Exemption operate in the same manner.

ICAP is a stable quantity that does not vary in its meaning either seasonally or year-over-year. In contrast, UCAP changes seasonally and is calculated for each Resource using its derating factor. The very conversion between ICAP and UCAP, *i.e.*, the physical capacity corresponding to a MW of UCAP, varies both season-to-season and by Locality with the system weighted average derating factor calculated for that period. As a result, a UCAP based cap will necessarily vary in meaning over time, and between Localities. The ‘size’ (*i.e.*, the amount of physical capacity or CRIS MW corresponding to it) of a UCAP based cap will likely be different from one Class Year to another.

Furthermore, in order to implement a UCAP based cap, the NYISO would have to track every resource with a Renewable Exemption, by Class Year, and recalculate their available UCAP each Capability Period in order to determine whether or not the cap was binding. This

implementation represents a significant increase in complexity and administrative burden as compared with an ICAP based cap. The alternative would be to determine and allocate the MW to the Renewable Exemption Applicants on a UCAP basis, and then convert the value to ICAP. However, doing so would be the equivalent of having an ICAP based cap.

Likewise, the implementation of a UCAP based cap would introduce additional uncertainty for resources seeking, and having already been granted, a renewable exemption. Because the NYISO would have to determine whether the cap is exceeded each time resources' derating factors were updated, even an already exempt renewable resource will not know with certainty whether some of its UCAP will be subject to the Offer Floor for any given Capability Period. In contrast, if the cap were in ICAP, every ICAP Supplier that has received a Renewable Exemption will know if any of its CRIS MW are subject to the Offer Floor, and will therefore be able to accurately predict its exempt UCAP with the same certainty as with which it can predict its available UCAP. Thus, it would be in the same position as other resources that are subject to an Offer Floor.

CRIS MW associated with Generators that are also eligible for a Self Supply Exemption or not subject to an Offer Floor in accordance with existing Section 23.4.5.7.2(a) or (b) (*i.e.*, the Part A Test and Part B Test) would not count towards the 1,000 MW cap or be counted when calculating partial Renewable Exemption amounts. The MW amounts for which an NCZ Examined Project was determined to be eligible at the time the NYISO issues an Indicative Buyer Side Mitigation Determination pursuant to Sections 23.4.5.7.2.2 or 23.4.5.7.2.1 would count towards the 1,000 MW cap. This is because the purpose of the cap is to "limit the total amount of such renewable resources [...] that may receive the exemption, to further limit any risk that these exempted resources will impact NYISO's ICAP market prices." Counting all the projects that are exempt under other tests (*i.e.*, the Part A and Part B Tests or the Self Supply Exemption) would be inappropriate because it is not the purpose of the cap to limit the impact of resources that are able to qualify under those exemptions. Rather, it is to limit the amount of resources receiving a Renewable Exemption that would not have otherwise been exempt from the Offer Floor, and thus would not have otherwise been able to affect capacity market prices.

## **5. Renewable Exemption Processes and Procedures**

Section 23.4.5.7.13.1.1 specifies that Generators that are members of Class Year 2015 must submit requests for a Renewable Exemption no later than April 28, 2016. Given that the Order established an effective date of October 9, 2015, that it determined that the Services Tariff was unjust and unreasonable absent a properly tailored Renewable Exemption, and that Class Year 2015 is currently ongoing, it seems clear that the NYISO must provide an opportunity for Class Year 2015 projects to seek an exemption. Although the proposed deadline for such requests is only two weeks after the date of this filing the NYISO has discussed it with stakeholders on multiple occasions and as such they have already been on notice that the NYISO would only make the exemption available briefly to Class Year 2015 projects for some time. At the same time, there are currently no intermittent renewable projects in Class Year 2015 so it may well be that no Renewable Exemption will be sought for Class Year 2015 in any event.

Renewable Exemption Applicants that are members of Class Years after Class Year 2015 must submit their requests no later than the applicable deadline for notifying the NYISO of its election to enter that Class Year in accordance with Section 25.5.9 of Attachment S to the NYISO OATT. Those that are members of Class Year 2012 (*i.e.*, the Class Year immediately preceding Class Year 2015,) or of a prior completed Class Year, would not be eligible to request a Renewable Exemption.

Proposed new Section 23.4.5.7.13.1.1(a)(i), requires that Renewable Exemption Applicants must have a “proposed design in the Class Year to be powered solely by a device that can qualify as an Intermittent Power Resource or a Limited Control Run-of-River Hydro Resource” on the date by which the NYISO must receive the request for a Renewable Exemption. Alternatively, the NYISO may accept a Renewable Exemption request if it determines, in its sole judgment, that the Generator is reasonably expected to fall under one of those definitions at the time it is first qualified as an Installed Capacity Supplier..... ”

The timeline proposed for Renewable Exemption determinations is the same as that for other BSM Rule determinations. Proposed Section 23.4.5.7.13.4.2 provides that the NYISO will determine whether a proposed new Generator or Additional CRIS MW qualifies for a Renewable Exemption prior to the Initial Decision Period. The NYISO will also determine prior to the Initial Decision Period and at each Subsequent Decision Period (and upon completion of the Class Year) whether more than 1,000 MW of Installed Capacity would be eligible for a Renewable Exemption in a Class Year but for the 1,000 MW cap. If at the time of the ISO’s issuance of initial determinations or the completion of the Class Year more than 1,000 MW are eligible for a Renewable Exemption, the NYISO would first exclude from the cap the MW of any proposed new Generator and the Additional CRIS MW that were determined to be exempt pursuant to Sections 23.4.5.7.2 (a), or (b) or Section 23.4.5.7.13. The NYISO would then issue an initial determination (prior to the Initial Decision Period or at the time of any Subsequent Decision Period) or a final determination (if a member of the completed Class Year) of the MW equal to the proportion of the requested CRIS MW and Additional CRIS MW that will be exempt from an Offer Floor, as discussed above.

Section 23.4.5.7.13.4.4 provides that the NYISO would provide exemption determinations to the proposed new Generator or Generator requesting Additional CRIS MW concurrent with its issuance of determinations in accordance with Section 23.4.5.7.3.3, and for an NCZ Examined Project at the time of its determination pursuant to Section 23.4.5.7.2.1. Renewable Exemptions determinations would be made in the same time frame as other exemption and Offer Floor determinations under the BSM Rules. This exemption has been integrated in the existing ICAP mitigation and exemption framework. For transparency the ISO will, in accordance with proposed Section 23.4.5.6.12.4.4, post on its website the determination of whether the Examined Facility or NCZ Examined Project is exempt and if exempt, the quantity of MW, or non-exempt, from an Offer Floor, as soon as the determination is final. In addition, the Market Monitoring Unit’s report on the ISO’s determination has been expanded to include the determination of Renewable Exemptions such that market participants can be confident that the NYISO is performing its analysis in an accurate and principled manner.

## **6. Revocation of Renewable Exemptions**

Proposed new Section 23.4.5.7.13.3 would establish rules governing the revocation of Renewable Exemptions. These rules are modeled closely on those that the Commission accepted for Competitive Entry Exemption.<sup>29</sup> Like those rules, the Renewable Exemption revocation provisions protect the integrity of the NYISO's procedures, and the capacity market, by making it clear that Generators that should not retain Renewable Exemptions (or should not have obtained them in the first place) will lose them. The Renewable Exemption revocation provisions provide appropriate process protections for the Generator while making it clear that misconduct is potentially both a violation of the NYISO tariffs and subject to enforcement action by the Commission.

Section 23.4.5.7.13.3.1 specifies that a Generator that has received a Renewable Exemption for any amount of CRIS MW must notify the NYISO in writing within 5 business days if “(a) at the time that it first qualified as an Installed Capacity Supplier or at anytime thereafter, it is not solely powered by the same technology based on which it was evaluated for a Renewable Exemption, or (b) at the time it first qualifies as an Installed Capacity Supplier it is not solely powered by a technology that is defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource, even if the Renewable Exemption Applicant was determined to be eligible because, at the time it was evaluated, the ISO expected the technology would become defined as an Intermittent Power Resource or Limited Control Run-of-River Hydro Resource.” Upon receiving such a notification, the ISO would revoke the Renewable Exemption and apply an Offer Floor based on the date that the Generator or Additional CRIS MW first offered UCAP with appropriate annual adjustments consistent with established NYISO tariff provisions.

Some stakeholders suggested that a Renewable Exemption should not be revoked if a Generator changes its technology or the energy source by which it is solely powered. The NYISO disagrees. The Order was clear that Generators had to be powered “solely” by a qualifying technology in order to receive an exemption. Allowing changes to other technologies would be inconsistent with that directive and undermine the NYISO's ability to rely on objective thresholds when making exemption determinations. Disallowing such changes is also reasonable to the extent that a Renewable Exemption determination was case-specific and based on a particular set of assumptions regarding costs and revenues. The NYISO also disagreed with the further suggestion of some stakeholders to allow for redeterminations under those circumstances. The BSM Rules only allow for redeterminations in expressly defined and narrowly drawn situations.<sup>30</sup> It would be fundamentally inconsistent with the design of the BSM Rules,

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<sup>29</sup> See Services Tariff Section 23.4.5.7.9.5.

<sup>30</sup> See *Astoria Generating Co., L.P., et. al. v. New York Independent System Operator, Inc.*, 151 FERC ¶ 61,043 at PP 51, 53 (2015) (confirming that the BSM Rules only allow for re-evaluation of exemption or Offer Floor determinations when an Examined Facility “intends to receive transferred [CRIS] Rights at the same location” (and does not have to go through the Class Year process) or it “enters a new Class Year for CRIS” and that projects will not be retested under any other circumstances.)

and disruptive to their implementation, to allow for redeterminations when projects change technologies.

## **B. Proposed Tariff Language Implementing Self-Supply Exemption**

As it did with respect to the Renewable Exemption, the Order stated that a Self Supply Exemption should be limited to “certain narrowly defined” resources that “that have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.”<sup>31</sup> The Commission explained that it had previously held that a “self-supply [load serving entity] that owns or contracts for a large portion of the capacity needed to meet its load has no reason to finance uneconomic entry given that such a strategy would not be profitable.”<sup>32</sup> In other words, “if 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>33</sup> Moreover, the Commission believed 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 their exposure to future ICAP obligations based on their reasonable expectations for the future.”<sup>34</sup>

Accordingly, the Commission directed the NYISO to propose a Self Supply Exemption in this compliance filing “limited to load serving entities whose ICAP portfolios are consistent with reasonably anticipated levels of their future ICAP obligations.”<sup>35</sup> It also required that the NYISO’s proposed tariff language include “appropriate net-short and net-long thresholds” and directed the NYISO to “review and revise those thresholds, as necessary, on a periodic basis.”<sup>36</sup>

“Net-short and net-long thresholds will avoid exempting self-supply resources that ‘buy’ substantially more capacity [(i.e., that are significantly “net-short”)] or that, conversely, clear or sell substantially more capacity than they ‘buy’ (i.e., that are significantly ‘net-long’).”<sup>37</sup> In the Commission’s view, adopting such thresholds in the NYISO’s rules “will ensure that a load serving entity seeking to use the self-supply exemption does not have the incentive and ability to

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<sup>31</sup> Order at P 2. *See also* Order at PP 10, 36, 53.

<sup>32</sup> Order at P 61; *citing PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (the “PJM MOPR Order”) at P 25.

<sup>33</sup> Order at P 61.

<sup>34</sup> *Id.* *See also* Order at P 64 (“a well-formulated self-supply exemption can provide an important protection against potential ICAP market volatility. Also, by entering into long-term commitments to serve their own load, these select entities can provide better price stability for their customers and make decisions that may be more uniquely tailored to their needs than the broader market will allow.”).

<sup>35</sup> Order at P 62.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*



artificially suppress ICAP market prices; specifically, the net-short and net-long thresholds should be tight enough to prevent a load serving entity from being able to deliberately overpay for a resource in an attempt to manipulate ICAP market prices in a way that benefits the load serving entity's other purchases from the ICAP market."<sup>38</sup> The Commission found that "that the net-short and net-long threshold approach used in PJM is an effective means of narrowly tailoring a just and reasonable self-supply exemption."<sup>39</sup> At the same time, the Commission was clear that although the NYISO was expected to "pattern the design of the self-supply exemption on the parameters established under the PJM self-supply exemption" the NYISO "may also propose rules unique to the New York capacity market and its participants."<sup>40</sup>

The Order also specified that: (i) "given concerns regarding the state's ability to artificially suppress prices by channeling uneconomic entry through an exempted load serving entity, NYISO should consider the impacts of state decisions to subsidize resources that are owned or contracted for by a self-supplied load serving entity";<sup>41</sup> (ii) "NYISO should consider other appropriate limitations to the self-supply exemption, including barring from the exemption a 'project that has cost or revenue advantages 'that are irregular or anomalous, that do not reflect arms-length transactions, or that are not in the ordinary course of the self-supply [load serving entity's] business'"<sup>42</sup>; and (iii) similarly, the NYISO should consider excluding from eligibility a load serving entity that "'has an arrangement for any payments or subsidies that are specifically tied to the [load serving entity] clearing its project in [NYISO's ICAP market], or to the construction of its project.'"<sup>43</sup> As with its guidance regarding the net-short and net-long thresholds, the Order emphasized that it was "providing some parameters for NYISO to use in developing the self-supply exemption" but acknowledged that "NYISO may develop rules and parameters that recognize the unique characteristics of NYISO's capacity market."<sup>44</sup>

The Order also expressly agreed with the NYISO's position in response to the Complaint that: (i) a self-supply exemption could be appropriate for "load serving entities that continue to possess substantial capacity resources to serve their current load, but not for load serving entities that have divested substantially all of their capacity resources"; and (ii) "that a self-supply exemption would need to include rules addressing bilateral power purchase agreements."<sup>45</sup>

The Rehearing Order reiterated that "A properly constructed self-supply exemption will ensure that only those self-supplying entities that meet a sufficiently large proportion of their

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Order at n. 154.

<sup>41</sup> Order at P 63, internal note citation omitted. *See also* Rehearing Order at P 17.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Order at P 65.

<sup>45</sup> Order at P 65.

capacity needs through their own generation investment, and that therefore have limited or no incentive and ability to suppress ICAP market prices, will qualify for the exemption. There is no need to subject the business decisions of such load serving entities to the mitigation exemption test.”<sup>46</sup>

The NYISO considered all of the Commission’s guidance as it developed its proposed compliance tariff revisions. As required by the Order, and as noted below, it engaged in extensive stakeholder discussions regarding its proposed Self Supply Exemption. The NYISO’s Self Supply Exemption compliance tariff revisions are set forth in proposed new Section 23.4.5.7.14 of the Services Tariff. In general, under the NYISO’s proposal, an LSE with “a self-supply business model”<sup>47</sup> (*i.e.*, if the amount of capacity that the entity procures from the market is relatively small) would be allowed to enter into a Long Term Contract<sup>48</sup> for a proposed new generator or UDR project, or Additional CRIS, or to develop the new MW itself. The NYISO would determine the LSE’s Net Short Threshold, to examine whether the cost of new entry is higher than the cost savings to the entity from capacity price suppression due to new entry. The NYISO will determine the Net Long Threshold using a forecast of the Self Supply LSE’s load obligations. The results will be used to determine whether the Self Supply LSE has limited or no financial incentive and ability to suppress capacity market prices for the MW of the requested exemption. The NYISO’s specific proposed new tariff provisions are discussed in detail below.

In support of the proposed Self Supply Exemption tariff revisions, the NYISO submits the Popova Affidavit. As described therein, she is a subject matter expert on the matters discussed in this Section III. B.

## **1. Eligibility for Self Supply Exemption**

Proposed new Section 23.4.5.7.14.1 establishes eligibility requirements to be evaluated for a Self Supply Exemption. First, it references that the MW to be considered for an exemption are those to supply a Self Supply LSE. That term is a proposed new definition in Section 23.2.1 that would apply regardless of whether the developer was developing the new MW for itself or pursuant to a Long Term Contract. The proposal defines a Self-Supply LSE as:

[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 a Public Power Entity, “Single Customer Entity,” or “Vertically Integrated Utility.” For purposes of this definition only: (i) “Vertically Integrated Utility” means a utility that owns generation, includes such generation in a non-bypassable charge in its regulated rates, earns a

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<sup>46</sup> Rehearing Order at P 19 (note citation omitted).

<sup>47</sup> As discussed below, this proposal includes the new defined term “Self Supply LSE” in Section 23.2.1.

<sup>48</sup> “Long Term Contract” is a proposed new term that is defined in Section 23.4.5.7.14.1.1(b)(1). It is discussed below in Section III.B.1.b of this filing letter.

regulated return on its investment in such generation, and that as of the date of its request for a Self Supply Exemption, has not divested more than seventy-five percent of its generation assets owned on May 20, 1996; and (ii) “Single Customer Entity” means an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers.

This proposed definition, and the threshold requirement that is established through its application, are consistent with the Order’s guidance discussed above. The Self-Supply LSE definition reflects the Commission’s view that LSEs that self-supply a “majority” of their capacity are unlikely to finance uneconomic new entry because doing so would not be profitable. The NYISO’s development of this definition began with consideration of the specific characteristics of the NYISO’s capacity market, the nature of the Market Participants in it, and the definitions used in PJM’s Self-Supply Exemption.<sup>49</sup>

The definition of “Vertically Integrated Utilities” within the definition of Self Supply LSE would limit eligibility to only those entities that operate in a traditional distribution utility framework. It may be that no entity in New York will qualify as a “Vertically Integrated Utility” now or in the future given the extent of generation divestiture in the State. Nevertheless, it is appropriate to account for such entities in the definition since they are the kind that the Order and the Commission’s rulings regarding PJM’s tariff indicate should be eligible for a Self Supply Exemption.

The May 20, 1996 divestiture date was selected because that is when NYPSC issued its restructuring order, which ultimately resulted in investor owned utilities in New York divesting substantial portions of their generation.<sup>50</sup> The 75% divestiture establishes a bright line, thereby providing clarity and predictability for developers and Market Participants, while allowing “load serving entities that continue to possess substantial capacity resources to serve their current load, but not . . . load serving entities that have divested substantially all of their capacity resources”<sup>51</sup> to be eligible for a Self Supply Exemption.

Similarly, the “Single Customer Entity” definition establishes a 51% threshold as the minimum level at which entities described therein would be meeting their own needs with their own resources or long term contracts “to hedge their exposure to future ICAP” and “provide better price stability for their customers and make decisions that may be more uniquely tailored to their needs than the broader market will allow.”<sup>52</sup>

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<sup>49</sup> See PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment 5.14(h)(6)(i)(A-D).

<sup>50</sup> Cases 94-E-0952, *et al*, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion 96-12, *Opinion and Order Regarding Competitive Opportunities for Electric Service* (effective May 20, 1996).

<sup>51</sup> See Order at P65.

<sup>52</sup> See Order at 64-65.

**a. Sections 23.4.5.7.14.1.1 and .1(a)**

Section 23.4.5.7.14.1.1 makes it clear that all “requirements must be satisfied, by the deadline, in the required form, and with required information in accordance with ISO Procedures” or the NYISO shall not evaluate an exemption request. Under Section 23.4.5.7.14.1.1(a), an Examined Facility or NCZ Examined Project may request a Self Supply Exemption for a specified quantity of MW up to its CRIS MW requested in the Class Year (or that it is expected to receive as a transferee of CRIS at the same location.) For an existing Generator or UDR project that is an Examined Facility or NCZ Examined Project, that amount is up to its requested Additional CRIS MW. UDR projects are eligible for the Self Supply Exemption because, unlike the Renewable Exemption,<sup>53</sup> they have the same ability as a Generator to satisfy the requirements that the Order said Self Supply Exemption applicants should have.

If the Examined Facility or NCZ Examined Project requesting a Self Supply Exemption (such an entity is referred to in the proposed tariff revisions as an “SSE Applicant”) is a member of Class Year 2015, its request must be received on or before April 28, 2016.<sup>54</sup> This provision establishes a simple and clear transition mechanism for those entities that are currently engaged in the Class Year process and are undergoing exemption and Offer Floor evaluations under the existing BSM Rules. If the Examined Facility or NCZ Examined Project is a member of a subsequent Class Year<sup>55</sup> its request must be received no later than the deadline by which it must notify the NYISO of its election to enter the Class Year, such date as established in accordance with Section 25.5.9 of OATT Attachment S. If it is an expected recipient of a transfer of CRIS at the same location (which does not have to go through the Class Year process,) and such transfer will be effective on a date within the Mitigation Study Period for the Class Year, then the NYISO must receive its exemption request no later than the Class Year Start Date for the applicable Class Year.<sup>56</sup> These are the same deadlines that the NYISO has proposed for projects seeking a Renewable Exemption and the rationale for them is identical.<sup>57</sup>

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<sup>53</sup> The availability of the Renewable Exemption for Generators but not UDR projects is discussed above in Section III.A.1.

<sup>54</sup> The Class Year Start Date for Class Year 2015 was March 1, 2015 and the Class Year is well underway. As discussed below in Section V, in order the NYISO to make a determination on a request for a Self Supply Exemption for a member of Class Year 2015, the NYISO would need to receive an Order from the Commission accepting the proposed tariff revisions sufficiently in advance of the Initial Decision Period for Class Year 2015. As of the date of this filing, the NYISO anticipates that date will be in August 2016. Therefore, the NYISO is requesting an Order within 60 days of this filing.

<sup>55</sup> Here, subsequent Class Years refers to any Class Year after Class Year 2015.

<sup>56</sup> This timing corresponds to the timing described for these projects in existing Section 23.4.5.7.3(II). Such proposed projects are commonly referred in the context of the BSM Rules as “Category II” facilities. The NYISO notes that pending before the Commission is the NYISO’s tariff proposal pursuant to Section 205 of the Federal Power Act to eliminate Subsection III of Section 23.4.5.7.3 for the reasons described therein. *See New York Independent System Operator, Inc.*, Docket

Examined Facilities or NCZ Examined Projects that were members of Class Year 2012 (*i.e.*, the Class Year immediately preceding to Class Year 2015) at the time of its completion, or of a prior completed Class Year, would not be eligible to request a Self Supply Exemption, except with respect to requests for Additional CRIS MW.<sup>58</sup> This specification is necessary because, as with the Renewable Exemption, the Order directed the NYISO to create exemptions that would be prospectively applicable as of the prescribed October 9, 2015 effective date of the tariff revisions. Therefore, a Self Supply Exemption would not be available to projects that remained in Class Years that were completed before that date.

As with the proposed Renewable Exemption, Section 23.4.5.7.14.1.1(a) establishes that an SSE Applicant that requests a Self Supply Exemption in a given Class Year may not also request a Competitive Entry Exemption in the same Class Year. This prohibition is necessary because the two exemptions address different and mutually exclusive categories of entrants. The Self Supply Exemption is intended to allow LSEs to develop resources itself, which might not be supported exclusively by market revenues, in order to meet their Unforced Capacity obligations. Indeed, as noted above, the Order envisions that the exemption will generally be available to entities that procure a “relatively small” portion of their capacity from the market and have commensurately limited involvement with it. By contrast, the Competitive Entry Exemption is predicated on the assumption that a new resource’s cost of entry will be supported by market revenues alone.<sup>59</sup> In fact, the focus of a Competitive Entry Exemption determination is on ensuring that an entrant is “truly competitive,” *i.e.*, wholly reliant on market revenues for profitability, and thus has limited or no incentive to suppress capacity prices. Instead, the Self Supply Exemption is focused on confirming that an SSE Applicant is providing capacity, over a long term, to an LSE that lacks such ability or incentive.<sup>60</sup>

**b. Section 23.4.5.7.14.1.1(b)**

Proposed Section 23.4.5.7.14.1.1(b) establishes that if a SSE Applicant is not wholly owned (directly or indirectly) by an LSE or an entity that wholly owns the Self Supply LSE, then it must have a “Long Term Contract” with the Self Supply LSE to which it is obligated to provide capacity. If the SSE Applicant is wholly owned (directly or indirectly) by the Self Supply LSE that wholly owns the Self Supply LSE(s), then it must provide documentation at the

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No. ER16-1213-000 (filed March 17, 2016) at 36-37. That proposal requests an effective date of May 19, 2016 for the proposed revisions to eliminate Subsection III and references thereto in the Services Tariff.

<sup>57</sup> See Section III.A.5 above.

<sup>58</sup> The same rule applies to transferees of CRIS at the same location, in respect of completed transfers.

<sup>59</sup> See *Consolidated Edison Company of New York, Inc., et al. v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,139 (2015 at p 4 (“to allow for private investors, relying solely on market revenues, to enter the capacity market unmitigated upon certifying that they are a purely merchant investment, with no out of market subsidy.”)).

<sup>60</sup> In addition, a Public Power Entity or a Vertically Integrated Utility would not be eligible for a Competitive Entry Exemption given the requirements of that exemption. See Section 23.4.5.7.9.1.1.

time that the exemption request is made showing, to the NYISO's reasonable satisfaction that it has a statutory, regulatory, or organizational obligation to provide energy and capacity to meet the Self Supply LSE's Unforced Capacity Obligation.

Proposed new Section 23.4.5.7.14.1.1(b)(1) would define "Long Term Contract," for purposes of the Services Tariff's Self Supply Exemption provisions only, as

(i) a fully executed contract between the SSE Applicant that is a proposed new or existing Generator and a Self Supply LSE that is joining it in requesting the exemption, pursuant to which the SSE Applicant is obligated to provide to the Self Supply LSE (or LSEs if more than one Self Supply LSE,) for a minimum of 10 years, Installed Capacity in an amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested; or (ii) a fully executed contract between a Self Supply Applicant that is a proposed new or existing UDR project and a Self Supply LSE (or LSEs if more than one Self Supply LSE,) that is joining it in requesting the exemption, pursuant to which the Self Supply LSE(s) will have all rights to the UDRs and the use of the facility, for a minimum of 10 years, in the amount greater than or equal to the CRIS MW for which the Self Supply Exemption is requested.

The proposed definition of Long Term Contract establishes a minimum of a ten year commitment to reflect that the self supply business model is inherently built on long term arrangements. That duration "recognize[s] the need [a Self Supply LSEs to plan on a long-term basis]"<sup>61</sup> to meet its own capacity requirements, without establishing an overly burdensome duration requirements for obtaining a Self Supply Exemption. That time horizon was selected in part because it is consistent with the period of the load growth assumptions used to determine the Net Long Threshold (discussed below in Section III.B.2.) ; *i.e.*, both are 10 years. Some stakeholders suggested that 10 years was too short and that Long Term Contracts should be required to be 20 years, based on an the expected life of a power plant. Other stakeholders suggested that 10 years was too long given the current relatively short future period of the NYISO's capacity market auctions, and that an investment horizon would not look out as far given forecast uncertainty. The NYISO believes that 10 years appropriately recognizes real world investment horizons while establishing a parameter that would be consistent with a long term self supply business strategy. The bright line duration will also allow Self Supply LSEs to develop their resource plans, and consider arrangements with developers, knowing the minimum term for a Long Term Contract required to qualify for an exemption.

**c. Section 23.4.5.7.14.1.1(c) and (d)**

Section 23.4.5.7.14 requires that the SSE Applicant must specify the amount of CRIS MW for which it is requesting a Self Supply Exemption. That amount need not be the entire amount of CRIS MW that it is requesting in the Class Year or that it is expected to receive in a transfer at the same location, although it may not exceed it. If there is more than one Self Supply

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<sup>61</sup> See Order at P 61.

LSE making an exemption request jointly with the SSE Applicant, each must specify the amount of CRIS MW for which it is requesting the exemption, which may not exceed (individually or in aggregate) the total quantity of CRIS MW that the SSE Applicant is requesting in the Class Year.

When the SSE Applicant is not also the Self Supply LSE, the proposed new tariff language would also require that the SSE Applicant make its Self Supply Exemption request jointly, in a single request, with the Self Supply LSE(s) with which it has a Long Term Contract. Section 23.4.5.7.14.1(d) requires that “[a]ll Certification and Acknowledgement(s) required by section 23.4.5.7.14.2 must be received at the same time as the request for a Self Supply Exemption, in accordance with ISO Procedures.” It also requires that all other data and information requested by the ISO must be provided. The proposed certification requirements are discussed below in Section III.B.4. These provisions operate to ensure that the NYISO will have a clear understanding of the request, and the information it needs to begin its review of all aspects of that request.

**d. Section 23.4.5.7.14.1.2**

Section 23.4.5.7.14.1.2 establishes that the quantity of CRIS MW that is the “lesser of (i) the quantity of CRIS MW for which the Self Supply Exemption was requested and (ii) the quantity determined in accordance with Section 23.4.5.7.14.3 [the Net Long Test and the Net Short Test] shall be exempt from an Offer Floor” if the request satisfies several other requirements (as determined by the NYISO.) Thus, the request for a Self Supply Exemption can be determined to be not exempt (*i.e.*, it is determined that zero MW are entitled to an exemption,) or it can be determined to be exempt for a quantity up to the MW of the requested exemption; *i.e.*, the SSE Applicant, with respect to a Self Supply LSE, can obtain a partial exemption.

Specifically, the Self Supply Exemption request must satisfy all of the following requirements: (i) the proposed new or existing Generator, or a terminus of the proposed new or existing UDR project, must be electrically located in the same Mitigated Capacity Zone in which the Self Supply LSE has Projected ICAP Requirements;<sup>62</sup> (ii) unless the SSE Applicant is seeking the exemption in respect of its own Load, the proposed new or existing Generator or UDR project cannot own, in whole or in part, an LSE, or be an Affiliate of an LSE, other than the Self Supply LSE; (iii) the SSE Applicant and the Self Supply LSE(s) must have timely completed and submitted the applicable certification forms no later than the deadline set forth in Section 23.4.5.7.14.1.2(c); and (iv) the NYISO determines that the Self Supply LSE satisfies both the Net Short Threshold and the Net Long Threshold for a specified quantity of MW.

In addition, pursuant to Section 23.4.5.7.14.1.2(e), the Self Supply Applicant and the Self Supply LSE must certify that the SSE Applicant “does not have any contract, agreement, arrangement, or relationship . . . for any . . . material (in whole or in aggregate) payments,

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<sup>62</sup> “Projected ICAP Requirements” is defined in Section 23.4.5.7.14.3, and is discussed below. Generally, it is the projected amount ICAP the Self Supply LSE will have to purchase in a Locality or the NYCA.

concessions, rebates, or subsidies, connected to or contingent on the SSE Applicant's construction or operation," except for contract types expressly permitted by the tariff.

Proposed Section 23.4.5.7.14.1.2(e)(A) would allow an SSE Applicant to be and remain eligible for a Self-Supply Exemption if, under specified circumstances, it or its Self Supply LSE entered into certain specifically enumerated types of contracts that do not raise concerns even though they provide for material payments, concessions, rebates or subsidies. Any such contract must not be "irregular or anomalous" and must only reflect arms-length transactions or be consistent with the overall objectives of the Self Supply Exemption. The types of permissible contracts are substantially similar to those that the Commission previously determined would not disqualify entities from obtaining Competitive Entry Exemptions.<sup>63</sup> They are limited to contracts that are generally available to all potential entrants, and in some cases are essential to any entrant's ability to operate. When the Commission accepted this list of contracts as part of the Competitive Entry Exemption it found it "to be just and reasonable because these contracts are related more to economic development than to an attempt to subsidize a resource's entry into the market."<sup>64</sup>

- an Interconnection Agreement;
- an agreement for the construction or use of interconnection facilities or transmission or distribution facilities, or directly connected joint use transmission or distribution facilities;
- a grant of permission by any state entity to bury, lay, erect or construct wires, cables or other conductors, with the necessary poles, pipes or other fixtures in, on, over or under public property;
- a contract for the sale or lease of real property at or above fair market value as of the date that the agreement was executed, with the value demonstrated by an independent appraisal;
- an easement or license to use real property;
- a contract, with any state entity providing for a payment-in-lieu of taxes (*i.e.*, a "PILOT" agreement) or industrial or commercial siting incentives, such as tax abatements or financing incentives, provided that such agreements or incentives are generally available to industrial or commercial entities;
- a service agreement for natural gas entered into under a tariff accepted by a regulatory body with jurisdiction over that service; or
- a service agreement entered into under a tariff accepted by a regulatory body with jurisdiction over that service at a regulated rate for electric Station Power, or steam

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<sup>63</sup> See Section 23.4.5.7.9.1.3.

<sup>64</sup> See CEE Order at P 101 (2015).



service, excluding an agreement for a negotiated rate pursuant to any such regulated electric, or steam tariff.

Finally, the SSE Applicant and the Self Supply LSE(s) each must certify “that it does not have any contract, agreement, arrangement, or relationship . . . for . . . (ii) clearing in the ISO’s Installed Capacity market except as expressly permitted . . . .” The only exception to this requirement is if Self Supply Applicant had one Self Supply LSE would not be ineligible if the contract is with its Self Supply LSE. This provision will prevent one Self Supply LSE from cross-subsidizing other Self Supply LSEs. For example, this language would prevent one Self-Supply LSE from bearing a disproportionate share of a proposed new Generator’s development costs, in order to reduce the other Self Supply LSE’s costs to procure capacity from the Generator and in order to incentivize the other Self Supply LSE to procure new, exempt capacity when it otherwise might not have been in that Self Supply LSE’s interest to do so.

Proposed Section 23.4.5.7.14.1.2(e)(C) would establish that an entity seeking a Self Supply Exemption may ask the NYISO to provide its view of whether a particular contract or other arrangement would be disqualifying under Section 23.4.5.7.14.1.2(e). Such requests must be made jointly by the SSE Applicant and relevant Self Supply LSE(s) if they are separate entities. They must include all information required by the NYISO. The NYISO would specify a date prior to the Class Year Start Date of each Class Year after which it will accept a request for its views from projects and their potentially associated LSEs, if the project is reasonably expected to be eligible to elect to enter such Class Year. That date would be tied to the anticipated deadline for projects to elect to enter the Class Year (pursuant to Section 25.5.9 of the OATT.) Prior to that NYISO established date, a request for a review could not be received. This restriction on requests is appropriate given that the facts and circumstances surrounding the development of a Generator or UDR project can change, which would affect the NYISO’s ability to have appropriate information in order to evaluate the “contract.” Nevertheless, it is necessary to balance both the maturity of the project and the developer’s need for transparency and clarity, to the extent practicable. The NYISO’s proposed date would achieve that balance. The tariff also provides for this opportunity to be available through the date the SSE Applicant and the Self Supply LSE have the requirement to continue to provide Certifications and Acknowledgements; *i.e.*, the date the SSE Applicant first transmits (or if a UDR project, produces) Energy. The NYISO would also seek input from the Market Monitoring Unit when evaluating such requests.<sup>65</sup> It will respond to the request within 60 days provided it has the necessary information.

These NYISO’s proposed requirements, and proposed limited exceptions for certain contract types, and for when there is only one Self Supply LSE, comply with the Order’s guidance that the Self Supply Exemption be limited to “certain narrowly defined” resources that “that have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.”<sup>66</sup> They also address the Commission’s specific directives that the compliance tariff provisions guard against potential state subsidies, prohibit “irregular or

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<sup>65</sup> The Market Monitoring Unit’s responsibilities are also set forth in proposed revisions to Section 30.4.6.2.12 of the Services Tariff.

<sup>66</sup> Order at P 63, internal note citation omitted. *See also* Rehearing Order at P 17

anomalous” cost advantages; and exclude LSEs that have “an arrangement for any payments or subsidies that are specifically tied to the [load serving entity] clearing its project in [NYISO’s ICAP market], or to the construction of its project.”<sup>67</sup>

The NYISO’s proposed compliance tariff revisions were extensively discussed with stakeholders, and the concepts and drafts thereof evolved in response to their input. Some stakeholders asserted that these provisions are more restrictive than required in the Order, while other stakeholders asserted that more safeguards were needed to prevent potential subsidies. The NYISO believes that the proposed design and the tariff language implementing it will adequately protect the capacity market from potential subsidized entry while still providing the opportunity for LSEs that possess substantial capacity resources to serve their current load via self supply.

## **2. Net Short Threshold and Net Long Threshold**

Proposed Section 23.4.5.7.14.3 establishes the “Net Short Threshold” and the “Net Long Threshold.” In general, the proposed Net Short Threshold and Net Long Threshold would provide a numerical method to “avoid exempting self-supply resources that is ‘buy’ substantially more capacity [(i.e., that are significantly “net-short”)] or that, conversely, clear or sell substantially more capacity than they ‘buy’ (i.e., that are significantly ‘net-long’).”<sup>68</sup> The NYISO would determine the Self Supply LSE’s Net Short Threshold, to examine whether the cost of new entry is higher than the cost savings to the Self Supply LSE from capacity price suppression due to new entry, which “will ensure that a load serving entity seeking to use the self-supply exemption does not have the incentive and ability to artificially suppress ICAP market prices”<sup>69</sup> for the MW of the requested exemption. The NYISO will determine the Net Long Threshold using a forecast of the Self Supply LSE’s Load obligations.

The Commission found that “the net-short and net-long threshold approach used in PJM is an effective means of narrowly tailoring a just and reasonable self-supply exemption.”<sup>70</sup> The NYISO’s proposed Net Short Threshold and Net Long Threshold have a purpose and function that are conceptually similar to those of the thresholds used in PJM, but as expressly permitted by the Order, they have been designed to reflect the NYISO’s market and as a result, would be implemented differently.

The NYISO proposes to evaluate the Net Short Threshold and Net Long Threshold, and determine whether each is satisfied, based on its computation of each of the values described below in subsections “(a)” and “(b)” and established in proposed Section 23.4.5.7.14.3. If there is more than one Self Supply LSE associated with the Self Supply Applicant’s request for a Self Supply Exemption, the MW associated with each Self Supply LSE would be considered separately. This is because the Net Short Threshold and Net Long Threshold are calculated for

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

each individual Self Supply LSE at the time of their request, and using parameters specific to each Self Supply LSE. As a result, each request for exemption can be performed by evaluating whether the particular Self Supply LSE under consideration would have the incentive or ability to suppress capacity prices, under the arrangement proposed with the Self Supply Applicant, and for the period of the analysis, as described below. By evaluating the Net Short Threshold and Net Long Threshold specific to each Self Supply LSE during the Class Year process, the NYISO's proposal minimizes the potential for over-mitigation and under-mitigation.

**a. The Use of Historic Data**

The NYISO's proposed Net Short Threshold and Net Long Threshold would utilize average historic capacity purchases and average historic market prices in order to determine the inputs needed for their evaluation. The NYISO elected to take this approach in its proposal because the Self Supply LSE will be seeking to self-supply as part of a long-term outlook, a concept at the core of the Self Supply Exemption. When performing long term analysis, it may be appropriate to use historic data to inform business decisions, rather than a short term forecast such as the reasonably projected forecasts used elsewhere in the BSM rules. For example, the Part B Test examines only the three years beginning three years after the Class Year (*i.e.*, the Mitigation Study Period) while the Part A Test examines only the first of those years. It would not be reasonable to use forecasted market conditions for only those three years when evaluating a strategy that, in order to qualify for Self Supply Exemption, must be for at least ten years. Historic conditions, however, are a reasonable indicator of long-term future conditions.

Furthermore, historic average values are straightforward to calculate, transparent to Self-Supply LSEs, developers, and the marketplace as a whole, and their use would eliminate the possibility of any forecasting error that might result from a projection of future capacity purchases. Finally, the utilization of historic values throughout the Net Short Threshold and Net Long Threshold would retain internal consistency within the proposed Self Supply Exemption. Stakeholders have indicated that such internal consistency and transparency are highly desirable. The NYISO agrees.

The NYISO considered and has extensively discussed with stakeholders using inputs derived from the ICAP price forecast used in other BSM Rule examinations. However, if the ISO made use of the BSM ICAP price forecast, there is the potential that the Self-Supply LSE's capacity obligation would be substantially larger than the current obligation due to inclusion of proposed new entrants, some of which may not reach commercial operation. As a result, the Self-Supply LSE could appear to be "short" on capacity and need to purchase a substantial quantity of capacity from the market. Such an outcome would increase the likelihood that the NYISO would find the Self-Supply LSE has the incentive and ability to suppress market prices. The unintended consequence of using the ICAP price forecast used in other BSM Rule examinations, thus could serve as an incentive to LSEs to "oversize" their exemption requests in order to fulfill capacity obligations that they would not reasonably expect to have, but would reasonably expect to have if all of the members of the Class Year entered operation. Therefore, and for all of the reasons discussed here, the ISO rejected using the ICAP price forecast used in

other BSM Rule determinations to determine the input parameters for the Self Supply Exemption. Instead, in this context the proposed historic average approach is more appropriate.

The NYISO proposes to use the three previous Capability Years for a historic period, preceding immediately the Class Year Start Date of the Class Year being examined. The benefit of three Capability Years is twofold: (1) it provides more representative information, and (2) it mitigates the effect of potential gaming by the Self Supply LSE of its capacity requirements. It is also consistent with the approach used to determine the historic period used to established ICAP Demand Curves.<sup>71</sup>

## **b. The Proposed Net Short Threshold**

### **i. Overview**

The purpose of the NYISO's proposed Net Short Threshold is to determine whether a Self Supply LSE procures a relatively small amount of capacity from the ICAP market (*i.e.*, it is not significantly "net-short,") such that it has limited or no financial incentive and ability to suppress ICAP market prices, in a way that benefits the Self Supply LSE's other purchases. Conceptually, the Net Short Threshold seeks to estimate the minimum level of MW for which such a Self Supply LSE can be demonstrated to have limited or no financial incentive or ability to suppress capacity market prices. If the amount of CRIS MW for which a Self Supply Exemption has been requested exceeds this minimum level of MW, then the Net Short Threshold is satisfied.

The guiding principle behind the NYISO's proposed Net Short Threshold is that a Self Supply LSE will be allowed to procure capacity from the SSE Applicant if the SSE Applicant's cost of new entry is higher than the cost saving that the Self Supply LSE, and all of its Affiliates, might receive from any associated capacity price reduction due to the entry of the SSE Applicant. When that is the case, the Self Supply LSE has been demonstrated to have limited or no financial incentive or ability to suppress capacity market prices. The NYISO's proposed Net Short Threshold achieves this guiding principle by providing a 'self-updating' estimate of whether the Self-Supply LSE has the incentive and ability to suppress market prices. This construction compares the Self-Supply LSE's personalized capacity costs 'before' and 'after' the proposed entry.

The 'before' scenario represents a 'no change' scenario. That is, the Self-Supply LSE continues to purchase the same quantity of capacity from the NYISO ICAP market as it did during the three year historical period that informs the NYISO's analyses. The 'after' scenario assumes the SSE Applicant enters into service. As a result of this entry, the Self-Supply LSE (a) receives its designated quantity of capacity from the SSE Applicant; (b) purchases less capacity from the NYISO-administered ICAP market due to that capacity displacing its market purchases; and (c) the Self-Supply LSE's remaining purchases from the capacity market occur at a lower

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<sup>71</sup> See, *e.g.*, *New York Independent System Operator, Inc.*, 146 FERC ¶ 61,043 (2014).

price than they otherwise would have because (all else being equal) the SSE Applicant's entry will cause a reduction in capacity prices. In comparing the "before" and "after" scenarios, the ISO proposes to estimate the amount by which the SSE Applicant's price suppression causes the Self-Supply LSE to have lower capacity costs. If this amount exceeds the Self Supply LSE's cost of new entry, or for the Self Supply LSE to procure from the SSE Applicant, the MW of capacity for which the exemption is requested, then the determination is that the Self-Supply LSE has "the incentive and ability to artificially suppress ICAP market prices" and does not qualify for a SelfSupply Exemption for the requested amount of CRIS MW.

Under proposed Section 23.4.5.7.14.3.1, the Net Short Threshold will be calculated for each Self Supply LSE of each proposed project and will be satisfied if the NYISO determines that, summed over all Localities and the NYCA, the Self Supply LSE's and all of its Affiliates' "Total Capacity Costs without Entry" are expected to be less than the Self Supply LSE's and all of its Affiliates' "Total Capacity Costs with Entry."

## **ii. Explanation of Terms Used in the Net Short Threshold**

"Total Capacity Costs without Entry" are representative of the costs that the Self Supply LSE would incur if it kept buying the same quantity of capacity at ICAP Spot Market Auction prices, *i.e.*, if it did not self-supply in the manner proposed. The NYISO's proposal would estimate this amount by examining the quantity of capacity procured by the Self Supply LSE and the prevailing market prices over the three Capability Years preceding the Class Year Start Date of the Class Year, less the current capacity resources that the Self-Supply owns (directly or indirectly,) has contractual obligation to purchase, or for which it previously received a Self Supply Exemption.

"Total Capacity Costs with Entry" are representative of the costs that the Self Supply LSE would incur after the entry of the SSE Applicant. After this entry, the Self-Supply LSE purchases less capacity from the NYISO-administered ICAP market and the Self-Supply LSE's remaining purchases from the capacity market occur at a lower price due to a reduction in capacity prices.

The NYISO would calculate the estimated "Total Capacity Costs without Entry" used in the Net Short Threshold calculation as the sum over all Localities, and the NYCA, of the product of the NYISO's reasonably anticipated "ICAP Spot Auction Price without Entry" and the "Capacity Exposed to Market Prices without Entry." It would then calculate the "Total Capacity Costs with Entry" by adjusting the Self Supply LSE's "Capacity Obligations without Entry" and the "ICAP Spot Market Auction Price without Entry" to reflect the entry of the SSE Applicant.

At a high level, in order to compare the "Total Capacity Costs without Entry" to the "Total Capacity Costs with Entry," the NYISO's proposed Net Short Threshold analysis requires three inputs. Those are (a) the quantity of Self Supply LSE capacity purchases that are exposed to market prices, including the portion of its Unforced Capacity Obligation that a Self Supply LSE and its Affiliates must purchase in excess of their share of the NYCA Installed Reserve

Margin (and Locational Minimum Installed Capacity Requirements;) (b) the market prices at which the Self Supply LSE would make those purchases; and (c) the cost and operating characteristics of the SSE Applicant. This last input is needed in order to calculate the effect of the SSE Applicant on (a) and (b), *i.e.*, to determine the values necessary to calculate the “Total Capacity Cost with Entry” from the historic data used to calculate the “Total Capacity Costs without Entry.”

a) *Capacity Purchases Exposed to Market Prices*

In order to estimate the “Capacity Exposed to Market Prices without Entry” and “Capacity Exposed to Market Prices with Entry,” the ISO proposes to subtract the capacity the Self Supply LSE either owns or has a long-term obligation to purchase, in addition to subtracting all capacity associated with the previous Self Supply Exemptions with which the Self Supply LSE or its Affiliates were associated, from the average historic capacity purchases.

The NYISO’s proposal to subtract the capacity that the Self-Supply LSE owns or has under long term contract (“Self Supply Capacity”) recognizes that the “amount of capacity [the Self-Supply LSE] procures from the ICAP markets” will not necessarily equal the total capacity obligation of the Self-Supply LSE.<sup>72</sup> The NYISO proposes to subtract only capacity resources that are long term in nature and that the LSE expects to have the obligation to purchase after the SSE Applicant enters into service. Excluding from this calculation capacity that the Self-Supply LSE currently owns and expects to own in the future is reasonable because the cost to purchase such capacity does not depend on future market prices. Furthermore, excluding capacity resources that qualify as “Existing Long Term Commitments” recognizes that such long-term capacity purchases are not affected by future market prices. In addition, the NYISO proposes to exclude from this calculation the capacity of units that are owned by the Self Supply LSE and which the Self Supply LSE has demonstrated to the NYISO’s satisfaction, as having CRIS that would expire before the end of the mitigation Study period, subject to the NYISO’s approval. This would allow a Self Supply LSE to replace an existing unit that it expects to retire, instead of only being able to secure a Self Supply Exemption once it has already retired that unit.

The ISO also proposed to exclude from this calculation those MW for which the Self Supply LSE or any of its affiliates have been granted a Self Supply Exemption in previous Class Years (“Additional Self Supply Capacity”). This requirement is needed deter Self-Supply LSEs from purchasing capacity to meet load growth, selling off the capacity at the end of the contract term, and purchasing new capacity to meet that same load growth.

- “Capacity Exposed to Market Prices without Entry” would be calculated for each Locality and the NYCA as:
  - “Capacity Obligations without Entry” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using the average derating factor for each Locality

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<sup>72</sup> See Order at P 61.

- and the NYCA corresponding to the ICAP Spot Market Auctions used to determine the ICAP Spot Market Auction Price without Entry; minus
- “Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Self Supply Capacity; minus
  - “Additional Self Supply Capacity” for each Locality and the NYCA, translated from ICAP MW into UCAP MW using a derating factor, as determined by the ISO, that is reasonably anticipated to be associated with ICAP Suppliers included in this Additional Self Supply Capacity.
- “Capacity Obligations without Entry,” would be calculated for each Locality and the NYCA, as the product of (a) “Projected ICAP Requirements” and (b) one plus the “Excess Award Percentage”.
  - “Projected ICAP Requirements” would be defined as the reasonably projected ICAP MW that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality and the NYCA. Such projection would be based on the Self Supply LSE’s and all its Affiliates’ share(s) of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement, as applicable and in accordance with ISO Procedures, over the three most recently completed Capability Years preceding the Class Year Start Date.
  - “Excess Award Percentage” would be defined as the reasonably projected amount of excess capacity that the Self Supply LSE and all its Affiliates will be required to purchase in each Locality, and the NYCA, expressed as a percentage of its “Projected ICAP Requirements”. Such projection would be based on the total excess UCAP MW awarded in each ICAP Spot Market Auction, divided by the Locational Minimum Unforced Capacity Requirement, or the NYCA Minimum Unforced Capacity Requirement, for the same Capability Period and Locality (or the NYCA) in which the award was made, over the three most recent completed Capability Years preceding the Class Year Start Date.
  - “Self Supply Capacity” for a given Locality (or the NYCA) would be defined as the ICAP MW associated with a Generator or UDR project that the Self Supply LSE or any of its Affiliates own directly or indirectly, in at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, excluding any whose CRIS MW are projected by the NYISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE, and (b) the ICAP MW that the Self Supply LSE and all its Affiliates will be, or are reasonably projected to be, entitled to receive under “Existing Long Term Commitments” in that Locality (or the NYCA), excluding those that are associated with any Expected Retirement. For purposes of Self Supply Capacity, “Existing Long Term Commitments” would be the projected amount of Capacity that the Self Supply LSE or any of its Affiliates will receive under a written agreement (whether

stated in ICAP or otherwise,) with a minimum term of ten years, and that has at least six years remaining on the Class Year Start Date.

- “Additional Self Supply Capacity,” for a given Locality (or the NYCA,) would be defined as the ICAP MW of a Generator or UDR project that were granted a Self Supply Exemption at the time of the completed Class Year based on the Self Supply LSE or any of its Affiliates’ being a Self Supply LSE for such Generator or UDR project, in the 10 year period immediately preceding the Class Year Start Date of the Class Year, in that Locality (or the NYCA), excluding: (i) any ICAP MW that are included in Self Supply Capacity, (ii) any ICAP MW associated with a Generator or UDR project that the Self Supply LSE and any of its Affiliates own directly or indirectly, in at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that the CRIS of which is projected by the NYISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE; and (iii) any ICAP MW of a Generator or UDR project that neither the Self Supply LSE nor any of its Affiliates own directly or indirectly, in at least 50.01% (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of,) and that is an Expected Retirement.

b) *Market Prices for Exposed Capacity*

“ICAP Spot Market Auction Price without Entry” would be based on the ICAP Spot Market Auction prices for each Locality and the NYCA, averaged over the three most recently completed Capability Years preceding the Class Year Start Date. The use of ICAP Spot Market Auction prices is appropriate because they are a reasonable proxy for the price that an entity would pay for capacity.

c) *Costs and Operating Characteristics of the Self-Supply Applicant*

The Affidavit of Michael D. Cadwalader Affidavit,<sup>73</sup> which was submitted in support of the Complaint in this proceeding, assumed that the Self-Supply Applicant’s cost and operating characteristics would be the same as the proxy unit used to establish the ICAP Demand Curves.<sup>74</sup> The NYISO considered but rejected this approach. First, the NYISO’s tariff proposal contemplates that a variety of resources should be eligible to apply for the Self-Supply exemption. That is consistent with comments from several stakeholders. Examples include various types of conventional generators, renewable generators,<sup>75</sup> and UDR projects.<sup>76</sup> As such,

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<sup>73</sup> See FERC Docket No. EL15-64-000, *New York Indep. Sys. Operator, Inc.*, Complaint of the New York Public Service Commission, New York Power Authority, and New York State Energy Research and Development Authority (May 8, 2015), Affidavit of Michael D. Cadwalader, Exhibit B to Complaint at PP 42 65, 66, 85, and 103.

<sup>74</sup> See Section 5.14.1.2.

<sup>75</sup> See Section 23.4.5.7.13.1.1(b).

<sup>76</sup> See Section 23.4.5.7.14.1.1(a).



the ISO determined that it was not appropriate to limit the cost and operating characteristics to the specific technology of the proxy plant used to establish the ICAP Demand Curves.

Furthermore, the Services Tariff prescribes certain characteristics of the proxy plant, but these characteristics may not be applicable to other proposed entry in the NYCA. For example, the tariff requires that it be a peaking plant.<sup>77</sup> Therefore, the NYISO proposes to use a unit specific test Net Short Threshold method to ensure that self-supply projects with limited or no incentive and ability to suppress market prices receive an exemption, and to protect the market from those that may have the incentive and ability to suppress market prices.

The ISO will collect data from, and compute the Unit Net Cone of the Self Supply Applicant, under the existing BSM Rules. The Self Supply LSE and Self Supply Applicant will also provide additional data in order for the NYISO to make a determination under this proposed new exemption. These processes leverage and are consistent with the current BSM Rule processes to determine the net cost of new entry, including estimating the net Energy and Ancillary Services revenues, of the SSE Applicant.

- “SSE Evaluated ICAP” would mean the quantity of MW of CRIS for which a Self Supply Exemption is requested by an individual Self Supply LSE (or by a “Self Supply Examined Facility” in respect of its own Load). If the SSE Applicant reduces the quantity of CRIS MW requested in Class Year process pursuant to the rules,<sup>78</sup> the quantity the NYISO will consider for an SSE Exemption is correspondingly reduced. Specifically, the NYISO would reduce the SSE Evaluated ICAP if:
  - (i) following a notice that an additional System Deliverability Upgrade study(ies) will be conducted in accordance with Section 25.7.7.1 of the OATT, a Self Supply Examined Facility elects to keep its CRIS request but with no System Deliverability Upgrade identified to make the project deliverable (as provided for in Section 25.7.7.1(3),) and
  - (ii) the total quantity of MW of CRIS for which the Self Supply Exemption is requested exceeds the total amount of Deliverable MW, as specified in the next Class Year Interconnection Facilities Study report.

Under these circumstances, the NYISO would reduce the total quantity of MW of CRIS for which Self Supply Exemption is requested to the total amount of Deliverable MW identified in such Interconnection Facilities Study Report. If there is more than one Self Supply LSE associated with the Self Supply Applicant, the NYISO shall reduce the quantity of MW of CRIS for each Self Supply LSE by the ratio of Deliverable MW to the total MW of CRIS for which Self Supply Exemptions were initially requested. This is consistent with the BSM Rules because the NYISO only issues determinations in relation to new CRIS MW or CRIS MW transferred at the same location (these include Additional CRIS MW.)

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<sup>77</sup> See Section 5.14.1.2.

<sup>78</sup> That Class Year rule is set forth in 25.7.7.1(3) of the OATT.

- “Proportional Entry Costs” would be the percentage of the Unit Net CONE (expressed in dollars) of the Self Supply Examined Facility, calculated in accordance with Section 23.4.5.7.3 if an Examined Facility, or in accordance with Section 23.4.5.7.2.1 if an NCZ Examined Project, or in accordance with Section 23.4.5.7.6.1 if Additional CRIS MW, that is equal to the SSE Evaluated ICAP divided by the total MW of CRIS, or Additional CRIS, requested by the SSE Applicant in the Class Year.

d) *Adjustments for Entry*

The NYISO would calculate the “Total Capacity Costs with Entry” used in the Net Short Threshold calculation as the sum of “Proportional Entry Costs” and the sum over all Localities, and the NYCA, of the product of (a) “ICAP Spot Market Auction Price with Entry” and (b) “Capacity Exposed to Market Prices with Entry”.

The “Capacity Exposed to Market Prices with Entry” calculation is similar to the calculation of the “Capacity Exposed to Market Prices without Entry,” with appropriate, although minor, adjustments. First, in addition to the Self Supply Capacity and Additional Self Supply Capacity, the ISO will also net off the SSE Evaluated ICAP. This reflects the fact that the LSE will displace market purchases with the MW identified in the Self Supply Exemption request. Second, the NYISO will appropriately adjust for the additional MW the Self Supply LSE will have to purchase due to the new entry, which inherently increases the quantity of capacity available and therefore that is required to be purchased pursuant to the Services Tariff rules.

The “ICAP Spot Market Auction Price with Entry” would also be based on the ICAP historic average ICAP Spot Market Auction prices calculated for each Locality and the NYCA, over the three most recently completed Capability Years, but would be adjusted to reflect the entry of the SSE Applicant.

**c. The Proposed Net Long Threshold**

**i. Overview**

The Commission ordered the NYISO to design a Net Long Threshold to “avoid exempting from NYISO’s buyer-side market power mitigation rules self-supply resources that ...sell substantially more capacity than they ‘buy’ (i.e., that are significantly ‘net long’).” The NYISO proposes a Net Long Threshold based upon the NYISO’s public forecast of ten year peak demand growth. In designing the Net Long Threshold, the NYISO recognized that Self-Supply LSEs may have investment horizons that extend farther into the future than public market price quantities (e.g., the period of the ICAP Demand Curves) and other short term price signals. However, setting the Net Long Threshold based upon a very long term growth forecast (e.g., twenty years) could allow the Self-Supply LSE to “sell substantially more capacity than they ‘buy’” until load growth results in the Self Supply LSE fully utilizing its or its Affiliates’ owned or contracted capacity. The NYISO’s proposal achieves a balance between this concern and the interest that Self Supply LSEs may have investment horizons that extend into the future. The

NYISO further proposes to place a floor on the Net Long Threshold (1% growth in peak demand over ten years) to accommodate uncertainty in load forecasts.

Stakeholders provided substantial input on and there was discussion regarding this issue. Some stakeholders suggested that the NYISO accommodate even longer term investment horizons and commensurately increase the Net Long Threshold. Others argued that allowing ten years of load growth was too much since decisions were made on a shorter term basis. The NYISO is proposing a Net Long Threshold based on ten years of peak demand growth. The NYISO did not observe sufficient evidence to support the concept that Self-Supply LSEs have capacity market planning horizons on the order of twenty years. On the other hand, the NYISO does believe that factors such as Self-Supply LSE investment horizons, load growth uncertainty and project lead times, support a ten year Net Long Threshold.

The NYISO also proposes setting the load growth (*i.e.*, ten years) equal to the minimum contract duration required for an Examined Facility or NCZ Examined Project to be eligible to request a Self Supply Exemption. The allowable load growth should be the same as the minimum contract duration required for a project to be self supplying since both represent combine to define “the need for certain load serving entities to plan on a long-term basis.”<sup>79</sup>

## **ii. Explanation of Terms Used in the Net Long Threshold**

The NYISO would determine the largest amount of SSE Evaluated ICAP MW, up to the cumulative quantity of the Self Supply LSE’s and all of its Affiliates’ “SSE Evaluated ICAP” for which the Self Supply LSE’s and all of its Affiliates’ “Total Self Supply Capacity” is less than or equal to the “Future Capacity Obligation” and for each Mitigated Capacity Zone in which the Self Supply Examined Facility is located. The Net Long Threshold will be satisfied for the smallest of these determined amounts of SSE Evaluated ICAP MW, and will be considered not satisfied if the smallest of these amounts is zero. For purposes of the Net Long Threshold calculation:

(i) the “Total Self Supply Capacity” would be the sum, in each Mitigated Capacity Zone, of ICAP MW of (A) “Self Supply Capacity” (as defined above), (B) “Additional Self Supply Capacity” (as defined above), and (C) the cumulative quantity of the Self Supply LSE’s and all of its Affiliates’ “SSE Evaluated ICAP” (as defined above).

(ii) the “Future Capacity Obligation” is the product of (A) ICAP MW of “Capacity Obligations without Entry” (as defined above), and (B) the higher of (x) one plus the “10 year growth rate of peak demand” and (y) one plus one percent. The “10 year growth rate of peak demand” shall be determined based on the longest available NYISO Baseline forecast of non-coincident peak demand for the corresponding Mitigated Capacity Zone found in the “Baseline Forecast of Non-Coincident Peak Demand” table, or its successor

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<sup>79</sup> See Order at P. 61.

in the most current Gold Book,<sup>80</sup> published by the Class Year Start Date of the Class Year, for each Mitigated Capacity Zone.

If the Self Supply LSE and any of its Affiliates are associated with more than one Self Supply Exemption Request in the Class Year, the Net Long Threshold determination will be made based on the cumulative quantity of the Self Supply LSE and all of its Affiliates SSE Evaluated ICAP - as defined above -- ("Cumulative Affiliated Quantity") prior to the Initial Decision Period. The NYISO would recompute the Cumulative Affiliated Quantity prior to the NYISO's issuance of a Revised Project Cost Allocation Subsequent Decision Period if any Self Supply Examined Facility with which it is associated is no longer in the Class Year.

**c. Additional Provisions**

Finally, if the Self Supply LSE or its Affiliates are associated with more than one request for a Self Supply Exemption in the Class Year, and the Self Supply LSE and its Affiliates satisfy the Net Long Threshold in a non-zero amount that is greater than the "Cumulative Affiliated Quantity" then remaining in the Class Year, the NYISO shall reduce the exemption determination with which they are associated by the ratio of (a) the quantity of MW by which the Self Supply LSE and its Affiliates satisfy the Net Long Threshold, to (b) the Cumulative Affiliated Quantity associated with Self Supply Examined Facility(ies) then remaining in the Class Year. The NYISO also believes that its proposed Net Short Threshold fulfills the Commission's requirement that the NYISO "review and revise those thresholds, as necessary, on a periodic basis."<sup>81</sup> Inputs to the NYISO's Net Short Threshold, such as market prices, will update between each Class Year as market conditions change. Furthermore, the Self-Supply LSE's incentive and ability to suppress market prices will depend on the cost of suppressing market prices (*i.e.*, the net cost of entry of the unit requesting the Self Supply Exemption.) As a result of using recent market data and unit specific costs of new entry in its calculation of the Net Short Threshold, the NYISO's proposal will fulfill the Commission's "review and revise" requirement.

**3. Self Supply Exemption Determinations**

Proposed Section 23.4.5.7.14.4.1 establishes that "[p]rior to the Initial Decision Period, the ISO shall determine whether all or a portion of the MW specified in the request for a Self Supply Exemption is eligible for a Self Supply Exemption in accordance with Section 23.4.5.7.14.1.2." If the NYISO determines that all or a portion of the CRIS MW for which a Self Supply Exemption was sought is not eligible for a Self Supply Exemption then the NYISO would determine whether the project should be subject to an Offer Floor under the existing provisions of Section 23.4.5.7.3.2 (*i.e.*, by performing the Part A Test and Part B Test.) Any determination made under these provisions will be made prior to both the commencement of the

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<sup>80</sup> The "Gold Book" is defined in Section 23.4.5.7, and is the common nomenclature for, the NYISO's annual Load and Capacity Data publication.

<sup>81</sup> See Order at P 62.

Initial Decision Period, and to the NYISO's issuance of a Revised Project Cost Allocations, and after the Class Year is completed for any projects remaining in the Class Year at the time of its completion, and for transferees of CRIS at the same location (provided the NYISO has not received a notice does not notify the ISO, on or before the date the Class Year is completed, that it no longer expects to be the recipient of the transferred CRIS.) This timing is the same as the timing for exemption and Offer Floor determinations under the existing BSM Rules for Examined Facilities<sup>82</sup> and NCZ Examined Projects.<sup>83</sup> As soon as the determination is final the NYISO would post on its web site and concurrently notify the SSE Applicant and the Self Supply LSEs of its determination, and if exempt the quantity of MW, or non-exempt, from an Offer Floor.

When evaluating eligibility for a Self Supply Exemption, the NYISO would consult with the Market Monitoring Unit in the same manner that it does when making other exemption and Offer Floor determinations. The Market Monitoring Unit would publish a report on the NYISO's determination in the same manner that it does under other provisions of the BSM Rules.<sup>84</sup> These requirements provide for consistency between the proposed Self Supply Exemption, the proposed Renewable Exemption, and the established BSM Rules. They also give other developers and Market Participants pertinent information that will help them to make their own business decisions, and provide transparency.

#### **4. Certification and Acknowledgement Requirements and Forms**

Proposed Section 23.4.5.7.14.2 contains three variants of a certification and acknowledgment form. The first is for SSE Applicants not affiliated with their Self Supply LSEs, the second is for Self Supply LSEs not affiliated with SSE Applicants, and the third is for Self Supply LSEs that are directly or indirectly affiliated with, or that are part of the same entity as, the SSE Applicant. As noted above, the timely completion of the applicable forms and to the NYISO's satisfaction is a requirement to obtain a Self Supply Exemption.

The proposed certification and acknowledgement forms are intended to make it absolutely clear that entities submitting Self Supply Exemption requests are responsible for providing accurate information and are accountable, to both the Commission and the NYISO, if that information is inaccurate or not up-to-date. In particular, the forms must be signed by a person with knowledge of the relevant facts and with authority to confirm that the entity or entities seeking the exemption accept that false, inaccurate or misleading submissions may constitute tariff violations, be subject to Commission enforcement action under both the Services Tariff and the Federal Power Act, and could result in revocation of a Self Supply Exemption (as discussed below in Section III.B.5.)

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<sup>82</sup> See Section 23.4.5.7.3.3.

<sup>83</sup> See Section 23.4.5.7.2.1.

<sup>84</sup> The Market Monitoring Unit's obligation identified in proposed new Section 23.4.5.7.14.4.1 is also reflected in 30.4.6.2.12 of Attachment O.

The forms are modeled closely on the Competitive Entry Exemption certification and acknowledgement<sup>85</sup> that the Commission directed the NYISO to file and subsequently found to be just and reasonable. It is reasonable for the Self Supply Exemption forms to be “stringent” because they provide assurance that SSE Applicants meet the exemption criteria. This is substantially similar to the Commission’s acceptance of stringent criteria in the Competitive Entry Exemption certification.<sup>86</sup> Similarly, because the Commission agreed that the Competitive Entry Exemption forms were not unduly burdensome, it is reasonable to conclude that the proposed new certifications do not impose unreasonable excessive burdens on SSE Applicants.<sup>87</sup>

## **5. Revocation of Self Supply Exemptions**

Proposed new Section 23.4.5.7.14.6 would establish rules governing the revocation of Self Supply Exemptions. These rules track the NYISO’s proposed provisions regarding the revocation of Renewable Exemptions and, like them, are modeled closely on the revocation rules that the Commission accepted for Competitive Entry Exemptions.<sup>88</sup> The Self Supply Exemption revocation provisions protect the integrity of the NYISO’s rules, and the capacity market, by making it clear that Generators and UDR projects that should not retain Self Supply Exemptions (or should never have obtained them in the first place) will lose them. The revocation provisions provide appropriate due process protections for the Generators, UDR projects, and Self Supply LSEs, while making it clear that misconduct is potentially both a violation of the NYISO tariffs and subject to enforcement action by the Commission.

Specifically, if at any time prior to a Generator that has received a Self Supply Exemption first producing, or an exempt UDR project first transmitting, Energy it or the Self Supply LSE no longer satisfy the requirements of Section 23.4.5.7.14.1(e)(i) and (ii), or no longer meets the requirements of the certification and acknowledgement forms, then the Generator or UDR project and the Self Supply LSE must notify each other and the NYISO within 3 business days. Upon notification, the ISO shall revoke the Self Supply Exemption and apply the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP) and adjusted annually in accordance with existing Section 23.4.5.7 of the Services Tariff. Failing to provide the NYISO timely written notice would constitute a violation of the Services Tariff and be reported by the NYISO to the Market Monitoring Unit and to the Commission’s Office of Enforcement.

Where the NYISO reasonably believes that a request for a Self Supply Exemption was granted based on false, misleading, or inaccurate information, it would notify the Generator or UDR project and the Self Supply LSE that the exemption may be revoked. After giving 30 days written notice (to the extent practicable) the NYISO would be authorized to revoke the Self

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<sup>85</sup> See Section 23.4.5.7.9.2.

<sup>86</sup> See CEE Order.

<sup>87</sup> *Id.*

<sup>88</sup> See CEE Order at PP 88-91; Rehearing Order at P 90; *see also*, Section 23.4.5.7.9.2.

Supply Exemption and apply the Mitigation Net CONE Offer Floor in accordance with the Services Tariff. Prior to the revocation of a Self Supply Exemption and the submission of a report to the Office of Enforcement, the NYISO would provide the Generator or UDR project and Self Supply LSE an opportunity to explain any statement, information, or action. The NYISO could not revoke the Self Supply Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.

**C. Rules Applicable to Entities that Request Both a Renewable Exemption and a Self Supply Exemption, and Partial Exemptions**

As discussed above, the NYISO is proposing that Examined Facilities and NCZ Examined Projects may not request either a Renewable Exemption or a Self Supply Exemption in the same Class Year in which it requests a Competitive Entry Exemption. The NYISO is not proposing to prevent projects from applying for both a Renewable Exemption and a Self Supply Exemption in the same Class Year (or as applicable to Category II Examined Facilities, in relation to the same Class Year.)

An Examined Facility or NCZ Examined Project that requests both a Self Supply Exemption and a Renewable Exemption, that is eligible for a Self Supply Exemption and/or an Offer Floor exemption under Section 23.4.5.7.2 (*i.e.*, the “Part A Test” and “Part B Test,”<sup>89</sup>) and also eligible for a Renewable Exemption, would not be issued a Renewable Exemption. It would instead be exempted pursuant to the other applicable section.<sup>90</sup> Issuing Renewable Exemptions only to the Examined Facility or NCZ Examined Project that is not eligible for an Offer Floor exemption under another provision of the BSM Rules, is necessary given the 1,000 MW cap on Renewable Exemptions in any one Class Year. Counting CRIS MW that are eligible for multiple exemptions against the cap could result in an excessive and unwarranted restriction on the availability of Renewable Exemptions. The NYISO’s proposed approach would also allow for the renewable MWs to receive the exemption consistent with the Order’s rationale for when a renewable exemption is appropriate, as discussed above in Section III.A.

An Examined Facility or NCZ Examined Project also may receive an exemption for some of its MW but not all of its MW. Under the Self Supply Exemption, an SSE Applicant can be partially exempt due to either (a) the exemption request being for less than the amount of CRIS MW requested in the Class Year or to be transferred at the same location, or (b) the Self Supply LSE(s) do not meet the Net Short and Net Long Thresholds for the full amount of the MW for which the exemption was requested.<sup>91</sup> In this latter case, a determination for the remaining MW would be made pursuant to the Part A Test and the Part B Test, and under the Renewable Exemption provisions if a Renewable Exemption were requested.

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<sup>89</sup> Although an exemption under a Part B Test is not foreseeable because that outcome is inconsistent with the design of the tariff, it is not precluded by the tariff.

<sup>90</sup> See proposed Section 23.4.5.7.13.1.1(b).

<sup>91</sup> See Section 23.4.5.7.14.1.2, as discussed above in Section III.B.2.

Allowing for such a “partial exemption” would be consistent with the Order’s guidance that an exemption should be available for resources with “limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP capacity market prices.”<sup>92</sup> Were the rules to not provide an opportunity for a partial exemption, the NYISO would be mitigating new entrants that have limited or no incentive to suppress capacity prices. Conversely, providing an exemption for the entire requested CRIS amount, would under-mitigate. It is clear that by operation of the existing BSM Rules, in tandem with the proposed Renewable Exemption and the Self Supply Exemption provisions, that if the requested CRIS MW, Additional CRIS MW, or CRIS MW being transferred at the same location, are greater than the exempt MW, the portion of the unit that is not exempt under those tests or Part A Tests and B Tests, will be subject to an Offer Floor.

#### **IV. MISCELLANEOUS TARIFF REVISIONS**

In addition to the revisions described above, this compliance filing proposes a relatively small number of miscellaneous and conforming tariff revisions to the Services Tariff. These include: (i) updating existing language to add cross-references to the proposed new Renewable Exemption and Self Supply Exemption, or to new rules associated with them, in Services Tariff Sections 23.4.5.7, 23.4.5.7.2, 23.4.5.7.6, 23.4.5.7.9.3.2; 23.4.5.7.14.1.2, (ii) clarifying existing cross-references to Attachment O of the Services (iii) making minor clarifying revisions to the headings of Section 23.4.5.7, and (iv) correcting ministerial drafting errors or making miscellaneous changes to conform to the compliance revisions proposed herein in Sections 23.4.5.7.2, 23.4.5.7.5, 23.4.5.7.6.8, and 23.4.5.7.9.3.3. The Commission has routinely allowed the NYISO to include these kinds of ministerial clarifications and corrections in compliance filings.

#### **V. STAKEHOLDER PROCESS AND MARKET MONITORING REVIEW**

The NYISO reviewed and developed this tariff proposal and obtained stakeholder input on tariff concepts and language at eight stakeholder meetings. It discussed tariff concepts on November 18 and December 2, 2015, and on January 13, January 19, and January 26, 2016. The NYISO continued to discuss tariff concepts and reviewed detailed draft tariff revisions, which it revised based on stakeholder input on February 24, March 8, and April 6s. The NYISO’s presentations and discussions with stakeholders also included a review of analyses including the January 26 and March 3 at which Dr. Popova described the Wind and Solar Analysis, as noted in the Popova Affidavit and in Attachment IV to this filing. As noted above, the NYISO has identified in this compliance filing various areas of extensive discussion with stakeholders and several instances where the NYISO determined it was not appropriate to incorporate a proposal by a group of stakeholders on a given issue.

In addition, the NYISO sought the MMU’s input as it developed the tariff proposal and as it performed the Wind and Solar Analysis. It provided the MMU with an opportunity to review its draft compliance tariff language.

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<sup>92</sup> Order at P 2, P 10.



## **VI. EFFECTIVE DATE AND REQUEST THAT THE COMMISSION ISSUE AN ORDER WITHIN SIXTY DAYS**

In accordance with Paragraph 10 of the Order, the NYISO requests that the Commission make the tariff revisions proposed in this filing effective on October 9, 2015, the day that the Commission issued the Order.

The NYISO also requests that the Commission issue an order accepting this compliance filing within sixty calendar days, *i.e.*, no later than June 13, 2016.<sup>93</sup> The NYISO recognizes that the statutory mandate that the Commission act on Section 205 filings within sixty days is not applicable to compliance filings. But if the Commission does not act within that timeframe, the NYISO's ability to implement the proposed Self Supply Exemption for SSE Applicants that are members of Class Year 2015 could be jeopardized.

The NYISO does not wish to speculate concerning the confidential business plans of potential entrants. But it is not impossible that one or more might be eligible to and seek to qualify to obtain a Self Supply Exemption in advance of the proposed April 28, 2016 application deadline for Class Year 2015 members.<sup>94</sup> To the best of the NYISO's knowledge, it is also possible, although not certain, that it will need to make exemption and Offer Floor determinations for Class Year 2015 projects during August 2016.<sup>95</sup> If that proves to be the case then Commission action on this filing in sixty days will leave enough time for the NYISO to implement the proposed Self Supply Exemption rules in an orderly manner and make any determinations required under them for Class Year 2015 members by an August deadline.

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<sup>93</sup> The NYISO notes that June 12 is the sixtieth day after the filing but it is a Sunday.

<sup>94</sup> As noted above in Section III.A, there are currently no intermittent and renewable projects in Mitigated Capacity Zones in Class Year 2015 so it is not possible that there would be a request for a Renewable Exemption in the near future. But if it were possible, the NYISO would have the same concerns that have prompted it to seek a Commission order in sixty days.

<sup>95</sup> The Services Tariff establishes timelines for the NYISO to make and finalize exemption and Offer Floor determinations under the BSM Rules that are closely aligned with the timetable governing the Class Year cost allocation process under Attachment S of the OATT. *See, e.g.*, Services Tariff Section 23.4.5.7.2 *See, e.g., Proposed Enhancements to In-City Buyer-Side Capacity Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirement* at 13-14, Docket No. ER10-3043-000 (Sept. 27, 2010) (explaining that under the current version of the BSM Rules, "potential entrants will receive exemption and Offer Floor information that may be critical to their project development decisions in advance of the deadline for deciding whether to accept Project Cost Allocations, or Revised Project Cost Allocations, under OATT Attachment S."); *New York Independent System Operator, Inc.*, 133 FERC ¶61,178 (2010) (conditionally accepting the tariff provisions proposed in that filing.) The Attachment S timetable is not yet finalized but as of the date of this filing it appears that the timetable may result in an August 2016 deadline for the NYISO to begin issuing exemption and Offer Floor determinations for members of Class Year 2015.

## VII. COMMUNICATIONS AND CORRESPONDENCE

All communications and services in this proceeding should be directed to:

Robert E. Fernandez, General Counsel  
Raymond Stalter, Director of Regulatory Affairs \*  
Gloria Kavanah, Senior Attorney  
New York Independent System Operator, Inc.  
10 Krey Boulevard  
Rensselaer, NY 12144  
Tel: (518) 356-6103  
Fax: (518) 356-7678  
rfernandez@nyiso.com  
rstalter@nyiso.com  
gkavanah@nyiso.com

\* Ted J. Murphy  
Hunton & Williams LLP  
2200 Pennsylvania Avenue  
Washington, D.C. 20037  
Tel: (202) 955-1588  
Fax: (202) 778-2201  
tmurphy@hunton.com

\*Designated for receipt of service.

## VIII. SERVICE

This filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com). The NYISO will serve the parties in Docket No. EL15-64-000. In addition, the NYISO will e-mail an electronic link to this filing to the official representative of each party to this proceeding, to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

## IX. 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 October 9, 2015.

Respectfully submitted,  
*/s/ Gloria Kavanah*  
Gloria Kavanah  
Counsel for the  
New York Independent System Operator, Inc.

cc: Michael Bardee  
Anna Cochrane  
Kurt Longo  
Max Minzner  
Daniel Nowak  
Larry Parkinson

J. Arnold Quinn  
Douglas Roe  
Kathleen Schnorf  
Jamie Simler  
Gary Will