

April 13, 2015

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

**Re: New York Independent System Operator, Inc., Compliance Filing, Request for Commission Action by May 14, 2015, and Request for Limited Waiver, in Docket Nos. EL15-26-000, ER15-\_\_\_\_-000**

Dear Secretary Bose:

In accordance with Paragraphs 1 and 45 and Ordering Paragraph (C) of the Commission's February 26, 2015 order (the "Order"),<sup>1</sup> and with the Commission's March 31, 2015 Notice Granting Extension of Time, on the complaint ("Complaint") filed by Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corp., Rochester Gas and Electric Corp., and Central Hudson Gas and Electric Corp. (collectively, "Complainants"), the New York Independent System Operator, Inc. ("NYISO") respectfully submits proposed compliance revisions to its Market Administration and Control Area Services Tariff ("Services Tariff") and its Open Access Transmission Tariff ("OATT"). The NYISO requests that Commission accept its proposed compliance revisions with an effective date of February 26, 2015, as specified in Ordering Paragraph (C) of the Order. The NYISO also requests a limited one-time waiver of the requirement for developers to submit the Certification and Acknowledgement form set forth in Section 23.4.5.9.2.1, for developers in Class Year 2015 that submitted the request, certification, and acknowledgement form provided by the NYISO on March 5, 2015.<sup>2</sup>

For the reasons specified in Section VII below, the NYISO is requesting that the Commission issue an order accepting its proposed compliance tariff revisions by May 14, 2015.

The Order directed the NYISO to implement a competitive entry exemption to its buyerside capacity market power mitigation measures ("BSM Rules").<sup>3</sup> The Commission concluded that the absence of such an exemption in the BSM Rules was unreasonable because it could result in "private investors" being "unnecessarily mitigated and possibly deterred from entering the NYISO's capacity market altogether."<sup>4</sup>

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<sup>1</sup> *Consolidated Edison Company of New York, Inc., et al. v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,139 (2015).

<sup>2</sup> See discussion in Section III.C below, describing the "CY2015 Initial Form".

<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 4.

In accordance with the Order, this compliance filing includes tariff language that the Commission specifically accepted as well as new tariff language that the NYISO was expressly directed to develop. It also includes certain proposed minor adjustments to the specifically accepted language that the NYISO believes are necessary for clarity or to facilitate implementation. These adjustments are similar to ones that the Commission has allowed the NYISO to include in prior compliance filings.<sup>5</sup>

Finally, the NYISO asks that the Commission accept certain tariff revisions that were previously submitted and are presently pending in other proceedings. As discussed below in Section IV and shown on Attachment VII, these revisions do not directly address the competitive entry exemption. However, they are essential to a coherent reading of certain competitive entry exemption provisions and to their clear implementation. According to the NYISO's established filing procedures, the proposed new competitive entry exemption revisions are set forth on the tariff sections that incorporate all previously filed revisions even if not yet acted on by the Commission.<sup>6</sup> If the Commission accepts the provisions implementing the competitive entry exemption (*i.e.*, the new revisions shown in blackline on Attachments II, IV, and VI to this filing) prior to accepting the revisions already pending at the time of this filing, the NYISO requests that the Commission's order include a compliance requirement directing the NYISO to make necessary adjustments to the tariff language, as described in Section IV below.

## **I. DOCUMENTS SUBMITTED**

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

1. A clean version of the proposed revisions to Services Tariff Section 23 (Attachment H) ("Attachment I");
2. A blacklined version of the proposed revisions to Services Tariff Section 23 (Attachment H) ("Attachment II");

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<sup>5</sup> See, e.g., *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 at P 41 (2008) (accepting revisions proposed in a compliance filing "as needed to implement the modifications directed" in an order, even though the order did not specifically direct the filing of such revisions). See also *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,042 at 12 (2009) (accepting revisions that "make ministerial changes that permit the effective implementation" of the proposal that is the subject of the compliance filing).

<sup>6</sup> As described herein and shown on Attachments I, III, and V, the base tariff onto which the proposed competitive entry exemption compliance revisions are inserted includes those proposed in the Section 205 filing the NYISO made on March 13, 2015 proposing revisions regarding the application of the BSM Rules to requests by Generators and UDR projects for additional Capacity Resource Interconnection Service. *New York Independent System Operator, Inc., Proposed Tariff Revisions to Govern Requests for Additional Capacity Resource Interconnection Service*, Docket No. ER15-1281-000 (March 13, 2015) ("Additional CRIS Filing").

3. A clean version of the proposed revisions to Services Tariff Section 30 (“Attachment III”);<sup>7</sup>
4. A blacklined version of the proposed revisions to Services Tariff Section 30 (“Attachment IV”);
5. A clean version of the proposed revisions to OATT Section 12 (“Attachment V”);<sup>8</sup>
6. A blacklined version of the proposed revisions to OATT Section 12 (“Attachment VI”); and
7. For informational purposes only, blacklined tariff section versions showing the compliance tariff revisions proposed herein in relation to pending compliance filing revisions as described in Section IV of this letter (“Attachment VII”).

## II. BACKGROUND

### A. The BSM Rules

The BSM Rules are currently applicable to all proposed new entrants in the NYISO-administered Installed Capacity<sup>9</sup> (“ICAP”) market in Mitigated Capacity Zones. Under the BSM Rules, ICAP Suppliers that do not obtain an exemption are subject to an Offer Floor. The Offer Floor is set at the lower of the net cost of new entry of the ICAP supplier’s specific proposed unit (“Unit Net CONE”) or 75 percent of Mitigation Net CONE (“Mitigation Net CONE Offer Floor”).<sup>10</sup>

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<sup>7</sup> The revisions to Section 30.6.2.2.5 proposed herein are the same revisions pending in the Additional CRIS Filing. *See* Additional CRIS Filing at pp. 6, 14 and Attachments VII and VIII. The revisions are filed herewith accordance with the Order. *See* Order at P. 107; *see also*, NYISO Answer at p. 19.

<sup>8</sup> The revisions to OATT Section 12 proposed herein are the same revisions pending in the Additional CRIS Filing. *See* Additional CRIS Filing at p. 6, and Attachments V and VI. The same Section 12 revisions are filed herewith accordance with the Order. *See* Order at P. 107; *see also*, NYISO Answer at p. 19.

<sup>9</sup> Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in the Services Tariff. Note that the BSM Rules initially were only applicable to New York City. In 2013, the Commission accepted tariff revisions to implement buyer-side and supplier-side mitigation measures for all Mitigated Capacity Zones that then existed or that may be created in the future. *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 (“June 2013 Order”). Therefore, the BSM Rules now also apply to the G-J Locality.

<sup>10</sup> The Additional CRIS Filing pending before the Commission proposes a tariff revision to identify an Offer Floor that is based on 75 percent of Mitigation Net CONE as “Mitigation Net CONE Offer Floor.” *See* Additional CRIS Filing at Attachments I and II, Section 23.2.1 at definition of Offer Floor. At times, this term has been referred as the “Default Offer Floor,” but this latter term is not defined or used in the NYISO’s tariffs.

Section 23.4.5.7.6<sup>11</sup> of Attachment H establishes that “[a]n In-City Installed Capacity Supplier that is not a Special Case Resource shall be exempt from an Offer Floor if it was an existing facility on or before March 7, 2008.” ICAP Suppliers that enter the market after that date can obtain an exemption from Offer Floor mitigation if they pass either one of two exemption tests, which are set out in Services Tariff Section 23.4.5.7 and are often referred to as the “Part A Test” and the “Part B Test.” The Part A Test compares the annual price forecast, three Capability Years out with the inclusion of the Examined Facilities, beginning with the Starting Capability Period (the year of the project’s Class Year) to the Mitigation Net CONE Offer Floor for the corresponding Capability Year. Under the Part A Test, an Examined Facility is exempt from the Offer Floor if the forecasted annual ICAP Spot Market Clearing Price is higher with the inclusion of the Examined Facilities’ Unforced Capacity (“UCAP”) MW, projected for the corresponding Capability Year than the Mitigation Net CONE Offer Floor.

The Part B Test compares the average annual three-year price forecast, three Capability Years out from the Class Year, to the Unit Net CONE. An Examined Facility is exempt from an Offer Floor if that three-year average forecasted price exceeds the calculated Unit Net CONE.

## **B. The Competitive Entry Exemption to the BSM Rules**

The Complaint alleged that, because the NYISO’s current BSM Rules do not provide for a competitive entry exemption, they could be “unnecessarily applied to un-subsidized, competitive entrants who have no incentive to inappropriately suppress capacity market prices.”<sup>12</sup> The Complainants proposed to add a competitive entry exemption to the BSM Rules that would exempt a project that has no “non-qualifying contractual relationships” with a “Non-Qualifying Entry Sponsor.”<sup>13</sup> Complainants’ proposal was based on tariff language that the NYISO had developed through an extensive stakeholder process, with certain modifications. Under the proposal, if the NYISO determined that a project qualified for the competitive entry exemption, it would not be evaluated under the BSM Rules or subject to an Offer Floor.

In its answer to the Complaint,<sup>14</sup> the NYISO supported the implementation of a competitive entry exemption but asked the Commission to make a number of changes to Complainants’ proposal. In general, those changes undid modifications that Complainants had

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<sup>11</sup> This is the Section number in the currently accepted tariff revisions; however, the tariff revisions in the Additional CRIS Filing propose to revise that section number to be 23.4.5.7.7.

<sup>12</sup> Complaint at 2, 8.

<sup>13</sup> “Non-qualifying contractual relationships” are contracts, agreements, relationships, and arrangements related to the planning, siting, interconnection, operation, or construction of the project, contracts for the energy or capacity produced by or delivered from or by the project, or contracts that provide services, financial support, or tangible goods to the project that are entered into with a Non-Qualifying Entry Sponsor. See proposed Section 23.4.5.7.9.1.2. A Non-Qualifying Entry Sponsor is a Transmission Owner, a Public Power Entity, or any other entity with a Transmission District in the New York Control Area, or an agency or instrumentality of New York State, or a political subdivision thereof. See proposed Section 23.4.5.7.9.1.1.

<sup>14</sup> *Answer of New York Independent System Operator in Support of Complaint*, Docket No. EL15-26-000 (Jan. 15, 2015) (“NYISO Answer”).

made to, or restored necessary language that they had omitted from, the very similar competitive entry exemption tariff language that the NYISO had previously developed in its stakeholder process. The NYISO's independent Market Monitoring Unit ("MMU") and other parties also asked the Commission to make certain further changes.

The Order found that the absence of a competitive entry exemption in the BSM Rules was unjust and unreasonable. It directed the NYISO to adopt the proposal set forth in the Complaint with various modifications.<sup>15</sup> Accordingly, the NYISO is making this filing to modify its tariffs to implement a competitive entry exemption.<sup>16</sup>

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

#### **A. Tariff Language Proposed by the Complainants that Was Not Modified by the Order**

The Order directed the NYISO to file unchanged several of the Complainants' proposed Services Tariff sections.<sup>17</sup> Accordingly, the NYISO includes in this filing the following sections as proposed by the Complainants:<sup>18</sup>

- ☐ Section 23.4.5.7.9.1.1 through 1.2 (describing eligibility for a competitive entry exemption and defining "Entry Date," "Non-Qualifying Entry Sponsor," and "non-qualifying contractual relationship");
- ☐ Section 23.4.5.7.9.1.4 (explaining the NYISO's review of competitive entry exemption certifications, in consultation with the MMU);
- ☐ Section 23.4.5.7.9.2.4 (stating the timing for submitting certifications);
- ☐ Sections 23.4.5.7.9.3.1 through 3.3 (outlining the timing for exemption applicants to submit certifications and related information and to withdraw an exemption request); and
- ☐ Sections 23.4.5.7.9.4.1 through 4.2 (describing posting and reporting requirements of the NYISO and the MMU).

#### **B. Certification Requirements**

The Order agreed with the NYISO that the Complainants' proposed certification requirements for projects seeking a competitive entry exemption were "significantly weaker"

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<sup>15</sup> Order at PP 45, 53.

<sup>16</sup> Order at P 53.

<sup>17</sup> Order at P 53.

<sup>18</sup> The NYISO notes that the section numbering in this filing has been updated from the version set forth on NYISO Answer Attachment 3. The majority of the proposed competitive entry exemption provisions set forth in Attachments I and II to this filing reside in Section 23.4.5.7.9, but appeared in the NYISO Answer as Section 23.4.5.7.8. The numbering update was prompted by the Additional CRIS Filing revisions.

than the certification requirements that were developed in the stakeholder process, which the NYISO identified in the NYISO Answer.<sup>19</sup> The Commission therefore directed the NYISO to adopt the certification requirements<sup>20</sup> proposed in the NYISO Answer and to add an additional certification requirement proposed by the MMU: that no unexecuted agreements with a non-qualifying entity, written or unwritten, exist that would support the development of the project.<sup>21</sup> The Order also instructed the NYISO to incorporate the form of certification into its tariff.

Accordingly, the NYISO includes with this filing:

- the version of Section 23.4.5.7.9.2.1 as proposed in NYISO Answer at Attachment 3, modified to recognize the requirement that the form of certification is incorporated into the tariff (as described below), with the addition of the additional requirement proposed by the MMU, described above;
- proposed Sections 23.4.5.7.9.2.2 through 2.3 and Sections 23.4.5.7.9.2.5 through 2.7, which were set out in the NYISO Answer at Attachment 3; and
- proposed Section 23.4.5.7.9.2.4, as set out in the Complaint and in the NYISO Answer.<sup>22</sup>

### **C. Certification Form**

The Commission directed the NYISO to include the certification form that applicants for competitive entry exemptions would be required to submit in the Services Tariff.<sup>23</sup> Accordingly, the NYISO proposes to incorporate in its tariff at Section 23.4.5.7.9.2.1 the certification and acknowledgement form that reflects the certification requirements that the Order accepted, as described in Section B above.<sup>24</sup> This form is largely the same as the one developed through the NYISO's stakeholder process, with necessary revisions to account for the Order's rejection of the proposed "*de minimis* exception"<sup>25</sup> and penalty provisions.<sup>26</sup> The proposed form incorporates the requirement originally suggested by the MMU regarding unexecuted agreements with a non-

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<sup>19</sup> Order at P 79.

<sup>20</sup> Order at P 53.

<sup>21</sup> Order at P 81.

<sup>22</sup> See Complaint, Exhibit B and NYISO Answer, Attachment 3.

<sup>23</sup> Order at PP 79, 83.

<sup>24</sup> Order at P 79.

<sup>25</sup> Under the Complainants' proposal, a project would be allowed to have non-qualifying contractual relationships and still qualify for a competitive entry exemption only if the subsidy value of such contracts did not exceed five percent of the total levelized cost of all capital and fixed operation and maintenance cost of the project. The Commission rejected this proposal, as well as similar proposals by the NYISO and the MMU. Order at P 64.

<sup>26</sup> Order at P 88.

qualifying entity.<sup>27</sup> It also includes a provision that parents or Affiliates of a project shall provide any information or cooperation requested by the NYISO, as accepted by the Order.<sup>28</sup>

The Order determined that the competitive entry exemption rule should be available to any project seeking to enter Class Year 2015.<sup>29</sup> The Commission therefore waived *sua sponte* the tariff requirement that a project notify the NYISO “within five (5) Business Days of the Class Year Start Date”<sup>30</sup> if the project will join that Class Year, and extended the deadline for projects to give notice of their intent to join Class Year 2015 to March 13, 2015.<sup>31</sup> Accordingly, the NYISO made available on March 5, 2015 a form to request a competitive entry exemption and the initial certification form for those seeking entry into Class Year 2015 (the “CY2015 Initial Form”). The CY2015 Initial Form is nearly identical to the certification form proposed herein as Section 23.4.5.7.9.2.1.<sup>32</sup> The NYISO provided that form, along with instructions on the deadline by which it must be received by the NYISO, to the members of several of its stakeholder committees as well as developers potentially eligible to enter Class Year 2015. For these reasons, the NYISO is requesting a limited waiver, applicable to Class Year 2015 only, of the requirement that developers provide the executed Certification and Acknowledgement form set forth in Section 23.4.5.7.9.2.1 by the deadline for them to give notice of their intent to join Class Year 2015 (*i.e.*, March 13, 2015.) The waiver would apply only to developers that timely submitted the executed CY2015 Initial Form.

#### **D. Allowable Contracts**

Under the competitive entry exemption developed by the NYISO and proposed by Complainants a project could enter into certain types of agreements with Non-Qualifying Entry Sponsors that would not be considered non-qualifying contractual relationships.<sup>33</sup> These “allowable” contracts include interconnection agreements, agreements for the construction or use of interconnection facilities or transmission or distribution facilities, contracts for the sale or lease of real property at or above fair market value, easements or licenses to use real property, contracts for generally available payment-in-lieu of tax (“PILOT”) agreements or industrial siting incentives, and service agreements for natural gas, among others.<sup>34</sup> The Commission

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<sup>27</sup> Order at P 81.

<sup>28</sup> See Order at P 79, Answer at Attachment 3 (then identified as Section 23.4.5.7.8.2.2), and proposed Section 23.4.5.7.9.2.2.

<sup>29</sup> Order at PP 83, 117

<sup>30</sup> OATT Section 25.5.9.

<sup>31</sup> Order at P 117.

<sup>32</sup> The CY2015 Initial Form required that developers acknowledge that they may be required to have a duly authorized officer execute any revised form submitted by the NYISO in compliance with the Order and accepted by the Commission. The CY2015 Initial Form is available at: [http://www.nyiso.com/public/webdocs/markets\\_operations/services/market\\_monitoring/ICAP\\_Market\\_Mitigation/Data\\_Submission/CEE-Request%20Certification%20Acknowledgement%20Form%203-5-2015.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/market_monitoring/ICAP_Market_Mitigation/Data_Submission/CEE-Request%20Certification%20Acknowledgement%20Form%203-5-2015.pdf).

<sup>33</sup> Order at P 92.

<sup>34</sup> *Id.*

agreed with most of the items proposed but ordered the NYISO to make certain changes to the list of allowable contracts.

Accordingly, the NYISO's proposed compliance tariff revisions<sup>35</sup> include a change, suggested by the City of New York and directed in the Order, to extend the permissible PILOT or siting incentives to include those that are generally available to commercial entities as well as industrial entities in the list of allowable contracts in proposed Section 23.4.5.7.9.1.3(vi). Also in accordance with the Order, the NYISO has not included those contracts providing financial hedges with Non-Qualifying Entry Sponsors and reliability-must-run contracts in the list of allowable contracts.<sup>36</sup>

## **E. Revocation Provisions**

The Order required the NYISO to propose revocation provisions that could be invoked against applicants that submit false, misleading, or inaccurate information in connection with a request for a competitive entry exemption. The Order instructed the NYISO to propose procedures for responding to such submissions that "achieve the same objective as those adopted" by PJM Interconnection, LLC ("PJM").<sup>37</sup>

The NYISO reviewed PJM's revocation provisions<sup>38</sup> and used them to develop the tariff provisions set out in proposed Section 23.4.5.7.9.5. As in PJM, the NYISO's proposed revocation provisions will ensure the integrity of the exemption process in a way that protects both the NYISO-administered markets and that is fair to the project against which allegations of submitting false, misleading, or inaccurate information are made.<sup>39</sup>

The NYISO's proposed revocation provisions establish that the submission of false, misleading, or inaccurate information, or the failure to submit requested information, in connection with a request for a competitive entry exemption will constitute a violation of the Services Tariff.

The proposed revocation procedures require the NYISO, if it reasonably believes that it granted a request for a competitive entry exemption based on false, misleading, or inaccurate information, to notify the project that its exemption may be revoked and provide the project an opportunity to explain any statement, information, or action.<sup>40</sup> The NYISO will be obligated to report any determination of a tariff violation to the Commission's Office of Enforcement (or any successor to that office's responsibilities).<sup>41</sup> The NYISO's delineation that the kinds of submissions specified above would constitute a violation of the Services Tariff is not intended to,

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<sup>35</sup> See Attachments I and II at proposed Section 23.4.5.7.9.1.3(i) - (viii).

<sup>36</sup> Order at PP 103, 105.

<sup>37</sup> Order at PP 90-91.

<sup>38</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, §5.14(h)(10) (17.0.0).

<sup>39</sup> PJM Interconnection, L.L.C., Filing letter at 31, Docket No. ER13-535-000 (Dec. 7, 2012).

<sup>40</sup> See proposed Section 23.4.5.7.9.5.2.

<sup>41</sup> See proposed Sections 23.4.5.7.9.5.1 and 23.4.5.7.9.2.



and legally could not, preclude the Commission from also deeming them to be violations of the Commission's rules and/or the Federal Power Act.

The revocation procedures permit the NYISO to revoke, with 30 days' written notice, a competitive entry exemption, if it reasonably believes that the exemption was granted based on false, misleading, or inaccurate information, and to apply the appropriate Mitigation Net CONE Offer Floor. If the NYISO does not provide 30 days' written notice, the NYISO can only revoke the competitive entry exemption if ordered to do so by the Commission.<sup>42</sup> The 30 day notice period appropriately balances the opportunity for the Generator or UDR facility<sup>43</sup> to respond, with an opportunity for the NYISO to timely protect the market or seek other relief.

#### **F. Tariff Provisions Necessary for the Implementation of the Competitive Entry Exemption**

Complainants' proposal did not include various additional revisions that were developed through the stakeholder process and are necessary for the competitive entry exemption to be clearly operative and implementable. These provisions contain necessary implementation details, clarify the relationship between the competitive entry exemption and other tariff provisions, and provide consistency with other BSM Rules.<sup>44</sup>

The Commission agreed and ordered the NYISO to include the following revisions to existing Services Tariff and OATT sections.<sup>45</sup>

- A revision to Services Tariff Section 23.4.5.7.2 to provide the NYISO with express authority to exempt competitive entrants from the Offer Floor if they qualify for the competitive entry exemption;
- A change to Services Tariff Section 30.4.6.2.12 to reflect the addition of the competitive entry exemption provisions in tariff language governing reports prepared by the MMU;
- Changes to Services Tariff Section 30.6.2.2.5 to allow the NYISO to request information needed to determine the availability of the competitive entry exemption; and
- An addition to OATT Section 12.4 to clarify that information disclosures authorized under the competitive entry exemption provisions are consistent with OATT rules regarding the disclosure of confidential information.

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<sup>42</sup> See proposed Section 23.4.5.7.9.5.2.

<sup>43</sup> Services Tariff Section 23 uses the terms "UDR project" and "UDR facility" interchangeably to describe an existing or proposed (depending on the context) capacity Resource that has or is anticipated to request Unforced Capacity Deliverability Rights.

<sup>44</sup> NYISO Answer at 18.

<sup>45</sup> Order at P 107.

The NYISO also is proposing in this filing revisions to Section 23.4.5.7 which it had proposed in the NYISO Answer.<sup>46</sup> These are among the revisions developed in the stakeholder process and were presented to the Business Issues Committee and Management Committee in May 2014. Like the other revisions described in the Order,<sup>47</sup> the revisions to Section 23.4.5.7 are necessary to make the competitive entry exemption clearly operative and implementable.<sup>48</sup> They are also similar to ones that the Commission has allowed the NYISO to include in certain prior compliance filings.<sup>49</sup> Accordingly, the NYISO asks that the Commission accept these revisions as being necessary for the implementation and operation of the competitive entry exemption.

Finally, the NYISO also proposes a conforming revision to Section 30.10.4, which addresses the MMU's obligation to prepare a report on Exemption and Offer Floor determinations, to include a cross-reference to Section 23.4.5.7.9.4.2. The Order required the NYISO to include in the Attachment H revisions, a provision that cross-references Section 30.10.4.<sup>50</sup> Accordingly, the revision of Section 30.10.4 to cross-reference 23.4.5.7.9.4.2 is included and is permissible for the reasons specified in the preceding paragraph.

**G. Revisions to Conform the Exemption Request Timing Provisions with Tariff Language Governing the Class Year Process**

The proposed compliance tariff revisions also include minor modifications to the language regarding the timing of the submissions for requests for a competitive entry exemption and the NYISO's posting of that information. The NYISO believes that both of these revisions clarify certain deadlines.<sup>51</sup> First, the language proposed during the stakeholder process and in the Complaint indicated that requests for an exemption and forms of certification and acknowledgement must be submitted by the Class Year Start Date.<sup>52</sup> The Class Year Start Date, however, is the date by which a project in the NYISO's interconnection queue must have satisfied the Class Year eligibility requirements, in accordance with Section 25.6.2.3.1 of Attachment S to the OATT. It is not the date by which the project must notify the NYISO that it elects to enter a Class Year. The Class Year notice deadline is five Business Days after the Class Year Start Date. Accordingly, to coordinate the developer's obligations, Section 23.4.5.7.9.3.2 of the proposed tariff revisions aligns the deadline for a developer to request a competitive entry exemption, with the deadline for the developer to notify the NYISO that it seeks entry into a

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<sup>46</sup> NYISO Answer at 18, n.33, and Attachments 3 and 4.

<sup>47</sup> See Order at PP 107-108.

<sup>48</sup> See NYISO Answer at 18, n.33, and Attachments 3 and 4, Order at P 108.

<sup>49</sup> See n.5 above.

<sup>50</sup> See Complaint at Exhibit B p. 7, identified therein as Section 23.4.5.7.8.4.2, and herein as 23.4.5.7.9.4.2. See also Section III.A above.

<sup>51</sup> See n. 5.

<sup>52</sup> See OATT Section 25.1.2, which defines "Class Year Start Date" as the "deadline for Eligible Class Year Projects to enter a Class Year Interconnection Facilities Study, determined in accordance with Section 25.5.9 of [OATT] Attachment S."

Class Year; *i.e.*, “the deadline by which a facility must notify the ISO of its election to enter the Class Year, such date as set forth in Section 25.5.9 OATT Attachment S.”

Second, the NYISO proposes to specifically state when it will post on its website the list of projects that become members of the Class Year, request a competitive entry exemption, and provide the Certification and Acknowledgement. Again for consistency with the Class Year Study process, the NYISO proposes in Section 23.4.5.7.9.4.1 that its posting will be made “promptly after the deadline set forth in Section 30.8.1 of the OATT (Attachment X) (by which the ISO must receive the Developer’s executed Class Year Interconnection Facilities Study Agreement and deposit).” The clarity added by this provision will avoid the potential confusion that could be caused should a project elect to enter a Class Year but not execute the agreement, pay its deposit, and satisfy other Class Year membership requirements.

#### **H. Treatment of Additional CRIS MW**

The NYISO proposes to add a sentence to make clear an eligibility requirement for the competitive entry exemption. Subsequent to the Commission’s issuance of the Order, the NYISO made the Additional CRIS Filing pursuant to Section 205. Although the competitive entry tariff provisions provided with the complaint and herewith specify an eligible project is a “proposed new Generator or UDR project,”<sup>53</sup> the NYISO proposes in this filing to add a sentence to Section 23.4.5.7.6 to make clear that Additional CRIS MW<sup>54</sup> are tested under that section and thus are ineligible to request a competitive entry exemption.<sup>55</sup> The NYISO is not opposed, in principle, to the eligibility of Additional CRIS MW for a competitive entry exemption, and also recognizes that eligibility appears to be consistent with the Order’s underlying rationale.<sup>56</sup> The MMU has authorized the NYISO to say that it also is not opposed.

Nevertheless, the Additional CRIS Filing was made subsequent to the issuance of the Order. Based on the NYISO’s review, the parties’ pleadings in this docket did not discuss the applicability of the competitive entry exemption to Additional CRIS MW. The NYISO believes that rules to make a competitive entry exemption available to Additional CRIS MW are therefore beyond the scope of this compliance filing. The NYISO has considered the scope of the potential further revisions to apply a competitive entry exemption to requests for Additional CRIS MW and notes that some revisions would differ substantially in some respects from the

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<sup>53</sup> See proposed Section 23.4.5.7.9.1.1.

<sup>54</sup> “Additional CRIS MW” is a proposed defined term in the Additional CRIS Filing. See Additional CRIS Filing at p. 6 and Attachment II at p. 1.

<sup>55</sup> This requested revision is pertinent if the Commission accepts of the tariff revisions proposed in the Additional CRIS filing.

<sup>56</sup> See, *e.g.*, Order at P 46 (current buyer-side mitigation rules should not be applied to competitive unsubsidized merchant resources because these resources do not have the incentive to exercise buyer-side market power ...[and] subjecting such resources to an offer floor serves no competitive objective or market efficiency, regardless of whether they are judged uneconomic according to NYISO’s existing buyer-side mitigation exemption test, because customers do not bear the risk or costs of uneconomic entry of such resources”).

rules for new entrants.<sup>57</sup> In light of these facts, the NYISO requests that the Commission direct it to make a further compliance filing, to address the applicability of a competitive entry exemption to Additional CRIS MW, after a sufficient period to develop such further revisions in its stakeholder process.<sup>58</sup> Due to the complexity of the revisions and other capacity market-related issues under review by the NYISO and its stakeholders, the NYISO suggests that should the Commission direct a compliance filing, it make the filing due no sooner than December 31, 2015 provided it receives an order to do so by the date requested herein for acceptance of this filing (May 14, 2015).<sup>59</sup> The NYISO believes that the proposed timing would not harm an existing generator or UDR project seeking Additional CRIS MW that might be eligible under the rules that need to be developed. Allowing time for stakeholder discussions would also be equitable to other developers and Market Participants.

## **I. Miscellaneous Revisions**

The Commission directed the NYISO to address two typographical errors in this compliance filing: to correct the first sentence of proposed Section 23.4.5.7.9.1.2 to refer to Section 23.4.5.7.9 in both instances, rather than to Section 23.4.5.7.6; and to change the word “Sponsors” in the second sentence of that section so that the sentence reads, in pertinent part: “if the third party has a non-qualifying contractual relationship with a Non-Qualifying Entry Sponsor, the recital ..... ”<sup>60</sup> The NYISO has made these corrections to Section 23.4.5.7.9.1.2.

The Commission also directed the NYISO to revise any additional typographical errors as necessary in this filing<sup>61</sup> and the NYISO has made the following minor correction: In Section 23.4.5.7.9.1.1, change “Qualifying Entity Sponsor” to “Qualifying Entry Sponsor” in the last sentence of the section.

For consistency, a minor modification was made to proposed Section 23.4.5.7.9.2.3 to add that a certifying officer must also have knowledge of qualification for a competitive entry exemption. The language proposed in the Complaint and presented to the Business Issues Committee and the Management Committee in May 2014 had only stated a requirement of knowledge of the facts and circumstances supporting the request.

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<sup>57</sup> For example, the period for which a new project’s certification and the specified restrictions apply is through the Entry Date; whereas, tariff provisions that would apply to an existing Generator or UDR project that requests Additional CRIS, would need to make clear the period and the MW to which the non-qualifying contractual relationships pertained.

<sup>58</sup> This request is subject to the Commission’s acceptance of the tariff revisions proposed in the Additional CRIS filing.

<sup>59</sup> The NYISO Answer describes the lengthy stakeholder process in which the competitive entry exemptions were developed and which was exhausted prior to the filing of the Complaint. *See* NYISO Answer at pp. 3-5. As described in n. 6 above, the tariff revisions proposed herein are presented on a base that incorporates the revisions proposed in the Additional CRIS Filing.

<sup>60</sup> Order at P 116.

<sup>61</sup> Order at P 116.

The Order approved language that provided that upon a refusal to provide information, upon the withdrawal of a request for a competitive entry exemption within two days of there being a “non-qualifying contractual relationship,” or upon the revocation, the Offer Floor would be based on 75 percent of Mitigation Net CONE (*i.e.*, “Mitigation NET CONE Offer Floor,” as defined in the Additional CRIS Filing). That concept, however, is incomplete absent the addition of language that provides that Offer Floors are to be based on the date the project first offers UCAP, in accordance with certain pending revisions to Section 23.4.5.7.3.6, specifically, the last two sentences thereof.<sup>62</sup> For ease of reference, the NYISO proposes herein to separate Section 23.4.5.7.3.6, so that the last two sentences of that section are in a new Section number 23.4.5.7.3.7. The proposed language would also be incomplete unless it is made clear that Offer Floors are adjusted annually in accordance with Section 23.4.5.7 of the Services Tariff.<sup>63</sup> Accordingly, proposed clause (b) of the Certification and Acknowledgement in Section 23.4.5.7.9.2.1(b), and Sections 23.4.5.7.9.2.7, 23.4.5.7.9.3.3, and 23.4.5.7.9.5.2 add to the language presented in the Complaint to achieve the consistency with the Commission’s directives in another order.<sup>64</sup>

The proposed revisions also conform the proposed language on eligibility (Section 23.4.5.7.9.1.1) and on the withdrawal of a request within two days of there being a “non-qualifying contractual relationship” (Section 23.4.5.7.9.3.3) to the Order’s requirement to require that projects certify there are no written or unwritten unexecuted agreements with a non-qualifying entity.

References to the certification form have been revised to describe it as the “Certification and Acknowledgment.”

#### **IV. REQUEST FOR COMMISSION ACCEPTANCE OF PREVIOUSLY PROPOSED AND PENDING SERVICES TARIFF REVISIONS THAT ARE NECESSARY FOR IMPLEMENTATION OF THE COMPETITIVE ENTRY EXEMPTIONS**

The NYISO’s established methodology for the filing of proposed tariff revisions requires that proposals be marked on a version of the tariff that incorporates, as if they were accepted,

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<sup>62</sup> New York Independent System Operator, Inc., *Compliance Filing*, Docket No. ER12-2414-000 (Aug. 6, 2012) (“2012 Compliance Filing”) and New York Independent System Operator, Inc., *Errata to Compliance Filing*, Docket No. ER12-2414-001 (Aug. 7, 2012) (“Errata to August 2012 Compliance Filing”), and New York Independent System Operator, Inc., *Refiling of Base Tariff Section to Correct Ministerial Error and Request for Waiver of Public Notice Requirement*, Docket No. ER12-2414-002 (Oct. 12, 2012) (“October 2012 Base Tariff Correction Filing”). The NYISO made the 2012 Compliance Filing in response to the Commission’s June 2012 order in *Astoria Generating Company L.P. v. New York Independent System Operator, Inc.*, 139 FERC ¶ 61,244 (“June 2012 Order”). The NYISO proposed in that filing a revision to Section 23.4.5.7.3.6 to comply with the directive. 2012 Compliance Filing at 8. That compliance filing is still pending before the Commission. *See also Request for Expedited Clarification and Alternate Request for Rehearing* in Docket No. EL11-42-000 (July 23, 2012).

<sup>63</sup> *Id.*

<sup>64</sup> *See* Section IV below, discussing language pending before the Commission in Section 23.4.5.7 regarding the adjustment of a project’s Offer Floor to reflect inflation, and in Section 23.4.5.7.3.6, regarding the adjustment of a project’s Offer Floor, to reflect the date it first offers UCAP.

pending proposed tariff revisions even though they have not yet been acted on by the Commission.<sup>65</sup> Accordingly, the tariff sections in Attachments I through VI to this filing include “clean” versions (*i.e.*, without blacklining or other marking) of various previously proposed revisions that are pending before the Commission. These include provisions that were submitted: (i) in the 2012 Compliance Filing in Docket No. ER12-2414-000 in compliance with the June 2012 Order, as well as in the errata to that compliance filing and in the October 2012 base tariff correction filing;<sup>66</sup> (ii) on June 26, 2014 and July 15, 2014 in Docket Nos. ER13-1380-004 and -005; (iii) on July 28, 2014 in Docket Nos. ER14-2518-000 and 001;<sup>67</sup> and (iv) on March 13, 2015 in the Additional CRIS Filing.

As was the case with the Additional CRIS Filing, this filing presents two issues related to the NYISO’s tariff filing methodology described in the preceding paragraph.<sup>68</sup> First, in certain instances, previously proposed pending tariff revisions are integrally related competitive entry exemption provisions that are proposed in this filing. That is, the new language builds upon certain language from pending filings, and cannot be practicably implemented if that earlier language is not accepted and effective. The NYISO is therefore respectfully requesting, as it did in the Additional CRIS Filing, that the Commission to accept the following pending revisions that are integrally related to the revisions proposed herein when the Commission acts on this filing (to the extent that the Commission has not already done so by that time).<sup>69</sup> The NYISO has previously made, and the Commission has previously accepted,<sup>70</sup> similar requests for action on pending compliance filing tariff revisions coincident with closely related proposed new revisions..<sup>71</sup>

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<sup>65</sup> 18 CFR § 35.10.

<sup>66</sup> New York Independent System Operator, Inc., *Errata to Compliance Filing*, Docket No. ER12-2414-001 (Aug. 7, 2012), and New York Independent System Operator, Inc., *Refiling of Base Tariff Section to Correct Ministerial Error and Request for Waiver of Public Notice Requirement*, Docket No. ER12-2414-002 (Oct. 12, 2012).

<sup>67</sup> New York Independent System Operator, Inc., *Proposed Tariff Amendments to Define Certain Outage States and Associated Requirements*, Docket No. ER14-2518-000 (July 28, 2014).

<sup>68</sup> The NYISO notes that since the Additional CRIS Filing was made, the Commission issued its order accepting tariff revisions pending in certain dockets identified therein. *See New York Independent System Operator, Inc.*, 150 FERC ¶ 61,208 (2015).

<sup>69</sup> The NYISO notes that the Commission’s agenda for its April 16, 2015 open meeting, issued on April 9, 2015, lists as Item No. E-20 Docket Nos. ER12-2414-000, 001, and 002.

<sup>70</sup> *See, e.g.* New York Independent System Operator, Inc., *Proposed Tariff Revisions to Establish and Recognize a New Capacity Zone and Request for Action on Pending Compliance Filing*, Docket No. ER13-1380-000 at 2 (April 30, 2013) (“As noted in Sections II.A.2 and V, the NYISO also asks the Commission to issue an order accepting pending compliance tariff revisions to establish market power mitigation rules in the NCZ as soon as possible.”). The Commission acted on the pending revisions in question (in Docket No. ER12-360-001) on June 6, 2013, *see* June 2013 Order. It issued its order accepting the NYISO’s proposed tariff revisions in ER13-1380-000 shortly afterwards, in August 2013.

<sup>71</sup> The NYISO’s submission of this filing should not be construed as a waiver or modification of any arguments in its *Request for Expedited Clarification and Alternate Request for Rehearing* in Docket No. EL11- 42-000 (July 23, 2012).

- **Section 23.4.5.7:** The language in this section stating that “Offer Floors shall be adjusted annually using the inflation rate component of the escalation factor of the relevant effective ICAP Demand Curves that have been accepted by the Commission .....” is pending before the Commission in Docket No. ER12-2414-000. This provision will be implicated if a competitive entry exemption is revoked and the NYISO must adjust the Offer Floor that is applicable to the project. The NYISO therefore respectfully requests that the Commission accept the pending quoted language when it acts on this filing.
- **Section 23.4.5.7.3.7:** As discussed above, if a competitive entry exemption is revoked, the project will be subject to an Offer Floor, which will be based on when the project first offers UCAP, in accordance with the following revisions to this Section that are pending before the Commission: “If the Installed Capacity Supplier first offers UCAP prior to the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be reduced using the inflation rate component identified in Section 23.4.5.7. If the Installed Capacity Supplier first offers UCAP after the first Capability Year of the Mitigation Study Period for which it was evaluated, its Offer Floor shall be increased using the inflation rate component identified in 23.4.5.7.”
- **Section 23.4.5.7.10** (which was numbered as Section 23.4.5.7.8 in the 2012 Compliance Filing, when it was originally proposed): The following language states that “[t]he ISO shall post on its website the identity of the project in a Mitigated Capacity Zone and the determination of either exempt or non-exempt as soon as the determination is final. Concurrent with the ISO’s posting, the Market Monitoring Unit shall publish a report on the ISO’s determinations, as further specified in Sections 30.4.6.2.1[2]<sup>72</sup> and 30.10.4 of Attachment O to this Services Tariff.” The language establishes obligations of the NYISO and the MMU to provide certain information in order to increase transparency regarding the NYISO’s determinations under the BSM Rules. It is therefore integral to the competitive entry exemption determinations as well.
- **Section 30.4.6.2.12:** The following language in this section is pending in Docket No. ER12-2414-000: “As required by Section 23.4.5.7.[9] of Attachment H to this Services Tariff, the Market Monitoring Unit shall prepare a written report confirming whether the ISO’s Offer Floor and exemption determinations and calculations conducted pursuant to Section 23.4.5.7.2 of the Market Mitigation Measures were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO’s approach. This report shall be presented concurrent with the ISO’s posting of its mitigation exemption determinations.” The proposed competitive entry exemption revisions amend this language to specify that the

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<sup>72</sup> When Section 23.4.5.7.10 was originally filed, it identified Section 30.4.2.11. In this filing, and in the Additional CRIS Filing, that language is set forth in 30.4.2.12.

Market Monitoring Unit must also evaluate the NYISO's compliance with proposed Section 23.4.5.7.9. Without the pending language quoted above, the proposed new reference to Section 23.4.5.7.9 in this section would stand alone and without context.

- **Section 30.10.4:** The following language in this section is also pending in Docket No. ER12-2414-000: “Reports on Offer Floor or Exemption Determinations - The Market Monitoring Unit shall prepare a written report confirming whether the ISO's Offer Floor and exemption determinations and calculations conducted pursuant to Sections 23.4.5.7.2 and 23.4.5.7.7 of the Market Mitigation Measures were conducted in accordance with the terms of the Services Tariff, and if not, identifying the flaws inherent in the ISO's approach. The Market Monitoring Unit's report shall be presented concurrently with the ISO's posting of the exempt/non-exempt determinations.” The proposed competitive entry exemption provisions refer to this requirement and include a provision that the MMU confirm that the NYISO's competitive entry exemption determinations are made in accordance with the Serves Tariff. The pending language in Section 30.10.4 is therefore essential to the NYISO's ability to implement the competitive entry exemption in a transparent and efficient manner.

If the Commission does not accept the pending tariff language above, it would not be practicable for the NYISO to implement the proposed new competitive entry exemption language without developing additional tariff revisions. Having to develop additional language would likely lead to a significant delay in implementation. It could also be impracticable to develop further revisions in a manner that does not implicate the pending provisions in any way.<sup>73</sup> Therefore, should the Commission not have accepted the previously pending language by the time that it rules on this filing, the NYISO requests that the Commission direct it on compliance to make any necessary adjustments to tariff language in the instant proposal so that the competitive entry exemption tariff provisions will be clear and complete.

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

On April 3, 2015, the NYISO circulated to its Installed Capacity Working Group a draft of its proposed compliance tariff revisions. It also notified stakeholders it would conduct a conference call on April 7, 2015 to receive comments. Further, in that notification, and during the April 7 conference call, it informed stakeholders that comments on the draft could also be provided by contacting certain persons at the NYISO. On April 7, 2015 the NYISO conducted a conference call and received input during, and before and after, that call. Some of the stakeholder input resulted in revisions to that earlier draft that are incorporated in this filing.

In addition, the MMU was given an opportunity to review and comment on the proposed

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<sup>73</sup> As noted above, if the Commission acted in the pending dockets, this issue would be eliminated.



compliance tariff revisions. The MMU has authorized the NYISO to state that, except for the issues the MMU raised in its petition for clarification or in the alternative, rehearing,<sup>74</sup> it supports this compliance filing.

## **VI. EFFECTIVE DATE**

The NYISO requests that the Commission make the tariff revisions proposed in this filing effective on February 26, 2015, the day that the Commission issued the Order.<sup>75</sup>

The requested effective date of February 26, 2015 encompasses the tariff revisions referenced in Section IV above that were previously submitted, and that are still pending before the Commission, which are integral to the implementation of the new revisions proposed herein. Without the acceptance of those pending revisions to Services Tariff Sections 23.4.5.7, 23.4.5.7.3.7, 23.4.5.7.10,<sup>76</sup> 30.4.6.2.12, and 30.10.4, the revisions proposed herein would be unclear.

## **VII. REQUEST FOR COMMISSION ACTION BY MAY 14, 2015**

The NYISO respectfully requests that the Commission issue an order accepting these tariff revisions by May 14, 2015. The Class Year 2015 has commenced and the NYISO expects to confirm the list of projects in the Class Year by the end of this month. Shortly thereafter the NYISO will commence its BSM Rule review of Examined Facilities. Commission action by May 14, 2015 will permit the NYISO to proceed in an orderly manner to request information and conduct reviews in relation to requests for a competitive entry exemption, concurrent with its processes under the current BSM Rules. Although the requested effective date pursuant to the Commission's Order<sup>77</sup> precedes the Class Year Start Date, accepted tariff provisions will establish the necessary clarity for the requirements and potential outcomes and consequences.

## **VIII. COMMUNICATIONS AND CORRESPONDENCE**

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

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<sup>74</sup> Potomac Economics, Ltd., *Request for Clarification, or in the Alternative, Rehearing of the New York ISO Market Monitoring Unit*, Docket No. EL15-26 (Mar 30, 2015).

<sup>75</sup> See Order, Ordering Paragraph (C).

<sup>76</sup> As noted above in Section IV, the 2012 Compliance Filing proposed this as Section 23.4.5.7.8.

<sup>77</sup> See Order, Ordering Paragraph (C); *see also*, Section VI above.

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## **IX. SERVICE**

This filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com). It will serve the parties in the Ordering docket, EL15-26-000 and, because the NYISO is requesting Commission action in specified pending dockets, it will also serve this filing on the parties in ER12-2414 and ER14-2518. 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.

## **X. CONCLUSION**

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the tariff revisions proposed in this filing and make them effective as of February 26, 2015.

Respectfully submitted,

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

cc: Michael Bardee  
Gregory Berson  
Anna Cochrane  
Morris Margolis  
David Morenoff  
Daniel Nowak  
Kathleen Schnorf  
Jamie Simler  
Kevin Siqveland

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<sup>78</sup> The NYISO respectfully requests waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3)(2014)) to the extent necessary to permit service on counsel for the NYISO in both Miami and Washington, D.C.