

³ See NRG Companies' Petition at 5-6.

(the “BEC Waiver Proceeding”)⁴ and Cricket Valley Energy Center in Docket No. ER17-1893-000 (the “CVEC Waiver Proceeding”),⁵ the NYISO does not oppose the NRG Companies’ request. It also joins in urging the Commission to act on the NRG Companies’ request no later than August 1, 2017. A determination by that date would avoid potential disruptions to the NYISO’s Class Year Interconnection Facilities Study⁶ (“Class Year Study”) and BSM processes.⁷

In both the BEC Waiver Proceeding and the CVEC Waiver Proceeding, the NYISO requested that if the Commission granted the waiver, it also briefly extend the deadline for CEE exemption requests (accompanied by the executed Certification and Acknowledgement)⁸ until August 1 for all similarly situated members of Class Year 2017. On July 20, the Commission staff issued a letter order in the BEC Waiver Proceeding that granted waiver but did not address the NYISO’s proposed generally applicable extension.⁹ Accordingly, the NYISO is not renewing in this filing its earlier requests for a generic extension. The NYISO reiterates, however, that it will not be practicable for it to consider any CEE exemption request by a similarly situated member of Class Year 2017 that is not submitted and complete with an

⁴ See *Motion to Intervene and Comments of the New York Independent System Operator, Inc.*, Docket No. ER17-1652-000 (June 12, 2017).

⁵ See *Motion to Intervene and Comments of the New York Independent System Operator, Inc.*, Docket No. ER17-1893-000 (July 14, 2017).

⁶ Capitalized terms not defined herein have the meaning set forth in the Services Tariff, which in accordance with Section 23.4.4 of the Services Tariff, includes the meaning set forth in the NYISO’s Open Access Transmission Tariff.

⁷ The Class Year Study processes are set forth in Section 25 of the Open Access Transmission Tariff, and the BSM Rules are set forth in Section 23.4.5.7, *et seq.*

⁸ See Services Tariff Section 23.4.5.7.9.2.4 providing that the CEE Certification and Acknowledgment “shall be submitted concurrent with the request for a Competitive Entry Exemption”.

⁹ See *Petition of Bayonne Energy Center, LLC for Limited Waiver and Request for Commission Action by August 1, 2017*, Delegated Letter Order: *Order Granting Uncontested Waiver*, Docket No. ER17-1652-000 (July 20, 2017).

executed Certification and Acknowledgement (and required Schedule) by August 1, 2017 for the reasons set forth below.

I. Motion to Intervene

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity and ancillary services in New York State. Of particular relevance, the NYISO administers the BSM Rules, including the rules for obtaining exemptions from mitigation, and the closely related Class Year interconnection process. The NYISO's administration of both the BSM rules and Class Year rules will be directly impacted by the Commission's ruling in this proceeding. The NYISO, therefore, has a unique interest that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all rights of a party.

II. Comments

The Services Tariff's deadline for submitting a CEE request is critical to the orderly administration of both the BSM Rules and the Class Year Study procedures. The tariff deadline allows the NYISO to perform the due diligence necessary to the evaluation of exemption requests. It also permits the NYISO to make determinations thereon concurrent with its consideration of those same facilities and all other Examined Facilities in the Class Year pursuant to the economic entry tests¹⁰ in the BSM Rules. Because the BSM Rules and Class Year Study process are so closely integrated, extending a deadline generally has the potential to cause delays and disruption to both. Thus, deadlines should not be altered lightly and it is important that the Commission reinforce their importance.

¹⁰ The BSM Rules contain two tests to determine economic exemptions and Offer Floors (commonly referred to as the "Part A Test" and the "Part B Test"). *See* Services Tariff Section 23.4.5.7.2(a) and (b).

Adherence to the tariff-specified deadline will be even more imperative in the future if the Commission accepts the proposed deadlines for submitting renewable and self-supply exemption requests which are pending in Docket Nos. ER16-1404, *et. al.*¹¹ At that point the deadlines for seeking various exemptions from mitigation will be the same - so that no developer has more information than another developer when it makes a decision on whether to request a Competitive Entry Exemption, renewable exemption, or a self-supply exemption. The potential disruptions caused by extending one deadline would thus be magnified.¹²

Even in the current absence of a renewable exemption or self-supply exemption, it would ordinarily be very problematic for the NYISO to process a CEE request that was not received until more than four months after the tariff deadline.¹³ However, given the specific circumstances and timing considerations relevant to this proceeding (which were also present in the BEC and CVEC Waiver Proceedings,) granting the NRG Companies' requested waiver of the deadline for submitting a CEE request and Certification and Acknowledgment in this instance would not practically cause delays or disruptions - with the caveats noted below.

Based upon: (i) the NYISO's review of the NRG Companies' waiver request, (ii) NRG Energy, the Developer as of March 8, 2017 (the deadline to request a competitive entry

¹¹ See *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. EL15-64-000, ER16-1404-000, at proposed Sections 23.4.5.7.13.1.1 and 23.4.5.7.14.1.1(a) (ii) (providing that "its request is received no later than 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, or (iii) an expected recipient of transferred CRIS rights at the same location and 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, provided that the request is received no later than the Class Year Start Date for such Class Year") and proposed revisions to the CEE provisions ("[a] Generator or UDR project that requests a Competitive Entry Exemption in a Class Year may not also request a Renewable Exemption or Self Supply Exemption").

¹² *Id.*

¹³ See NRG Companies' Petition at 5-6.

exemption) and its affiliate, NRG Berrians Development, the current Developer, both agreeing to submitting a completed Certification and Acknowledgement by August 1, 2017,¹⁴ (iii) the facts known to the NYISO at this time, (iv) the low potential for adverse market impacts, and (v) the Commission's guidance in earlier waiver orders, the NYISO does not oppose the NRG Companies' waiver request. The NYISO defers to the Commission on the question of whether the NRG Companies have met their burden of proof under the four-part waiver analysis.

As noted above, the NYISO supports the request that the Commission act on the NRG Companies' waiver request no later than August 1, 2017. If the Commission were to grant a waiver after that date, the NYISO's anticipates that its ability to administer the BSM Rules and Class Year Study process for 2017 Class Year projects could be impacted.¹⁵ The NYISO would use its best efforts to complete both processes in a timely manner and in good order but the further beyond August 1 that Commission action is delayed, the greater the potential that exemption and Offer Floor determinations and the overall Class Year Study process would be delayed. For the same reasons, it would not be practicable for the NYISO to consider any other CEE exemption request that is not submitted and complete by August 1, 2017.

In addition, the NYISO respectfully requests that any order granting the Companies' requested waiver of the procedural deadline for submitting CEE requests be clear that it is not altering any other tariff requirement, including those pertaining to the Certification and Acknowledgement that accompany CEE requests. In particular, the NRG Companies have

¹⁴ See NRG Companies' Petition at 7 (seeking the waiver "in order to allow the NRG Companies to submit a Competitive Entry Exemption request"). NRG Berrians Development's provision of the updated certification is contemplated by and consistent with Section 23.4.5.7.9.3.1 of the Services Tariff.

¹⁵ If the Commission's ruling is to deny the waiver request, an order by August 1, 2017 would add certainty for all members of Class Year 2017 and Market Participants.

agreed that both NRG Energy and NRG Berrians Development will execute the Certification and Acknowledgement,¹⁶ and the Commission should not relieve them of this obligation.

III. Communications and Correspondence

All communications and service with regard to this filing should be directed to:

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IV. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) grant this motion to intervene, (ii) consider these comments in making its decision on the NRG Companies' request; and (iii) limit any waiver to the one procedural deadline specifically identified by the NRG Companies.

¹⁶ See NRG Companies' Petition at 6.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 24th day of July, 2017.

/s/ Mohsana Akter

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