December 20, 2019

By Electronic Delivery

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

Re: New York Independent System Operator, Inc., Proposed Enhancements to the Competitive Entry Exemption Under its "Buyer-Side" Capacity Market Power Mitigation Measures; Docket No. ER20-____-000

Dear Ms. Bose:

In accordance with Section 205 of the Federal Power Act ("FPA"),[1] the New York Independent System Operator, Inc. ("NYISO") hereby submits proposed revisions to its Market Administration and Control Area Services Tariff ("Services Tariff"). The revisions would implement three enhancements to the existing "Competitive Entry Exemption" ("CEE") under the NYISO's "buyer-side" capacity market power mitigation measures (the "BSM Rules"). First, the proposed amendments would expand the scope of the CEE to encompass Additional Capacity Resource Interconnection Service megawatts ("Additional CRIS MW")[2] for the first time. These revisions would make the CEE available to Additional CRIS MW in a manner consistent with the underlying rationale for CEE. Second, the proposed revisions would allow Suppliers that enter into certain competitive short-term hedging contracts with Load Serving Entities to remain eligible to obtain a CEE for a new project or Additional CRIS MW. These revisions could facilitate the repowering and replacement of existing generators by allowing existing Suppliers to obtain a CEE for such a project while participating in the bilateral hedging market. Third, the NYISO is proposing revisions that clarify the consequences to CEE applicants that withdraw a CEE request or that provide false or misleading information to the NYISO with regard to a CEE Request.[3] The NYISO is also proposing a limited number of minor wording clarifications that are largely ministerial and entirely non-substantive.

[1] 16 U.S.C. § 824d (2012).

[2] Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in the Services Tariff.

[3] Section 23.4.5.7.3.4 of the Services Tariff will continue to require that a Developer that fails to provide adequate cost information or false or misleading cost information for an Examined Facility such that the NYISO cannot reasonably determine the project specific Unit Net CONE will be subject to the Mitigation Net CONE Offer Floor (which is sometimes referred to in this filing as the "Default Offer Floor").

The proposed enhancements are just, reasonable, and not unduly discriminatory. They will allow resources that should be eligible to obtain a CEE to do so without increasing the risk of capacity market price suppression. They were approved unanimously without abstention by the NYISO's stakeholder Management Committee and by the independent Board of Directors. They are also supported by the NYISO's independent Market Monitoring Unit ("MMU"), Potomac Economics.

As described in Part VII of this filing letter, the NYISO respectfully requests that the Commission issue an order accepting its proposed tariff revisions within the standard notice period under Section 205 which is sixty (60) days after the date of this filing; *i.e.,* by February 18, 2020, with an effective date of February 19, 2020, the day immediately following the end of the standard notice period.

I. Documents Submitted

Along with this filing letter, the NYISO respectfully submits the following documents:

1. A clean version of the proposed revisions to the Services Tariff ("Attachment I");

2. A blacklined version of the proposed revisions to the Services Tariff ("Attachment II");

3. A clean version of the proposed revisions to the Services Tariff made to comprehensive versions of Sections 23.2, 23.4.5.7, 23.4.5.7.6, 23.4.5.7.7, and 23.4.5.7.9 of the Services Tariff that includes all proposed revisions currently pending before the Commission which is being provided for informational purposes ("Attachment III"); and

4. A blacklined version of the proposed revisions to the Service Tariff made to comprehensive versions of Sections 23.4.5, 23.4.5.7, 23.4.5.7.6, 23.4.5.7.7, and 23.4.5.7.9 of the Services Tariff that includes all proposed revisions currently pending before the Commission which is being provided for informational purposes ("Attachment IV").

II. Description of Proposed CEE Enhancements

A. Expanding CEE to Include Additional CRIS MW

The CEE was established in 2015 to ensure that the BSM Rules would not apply to "pure merchants" who fund their projects without subsidies from entities with buyer-side market power . . . ."[4] The Commission emphasized that although the BSM Rules were intended to protect against uneconomic entry, that was not their only function. Bids from pure merchant projects

[4] *Consolidated Edison Co. of New York, Inc. v. New York Independent System Operator, Inc*., 150 FERC ¶ 61,139 at P 3 (2015).

that were below Net CONE were likely to represent the actual economics of such resources and if they did not then the resource would not be able to recover its costs. The purpose of mitigation was "not to protect a merchant resource from making a poor investment decision with its own capital."[5] Accordingly, there was no basis for subjecting pure merchant entrants to the BSM Rules.

Only new generators and UDR projects are eligible to obtain a CEE under the currently effective BSM Rules. The Commission ordered the NYISO to adopt the CEE in February 2015. In March 2015, the NYISO made a separate Section 205 filing proposing revisions to the BSM Rules addressing generators and UDR projects that request Additional CRIS MW for the first time.[6] The introduction of the Additional CRIS MW rules raised the question of whether Additional CRIS MW should be eligible for a CEE. The NYISO's April 2015 CEE compliance filing to implement the CEE addressed this point.[7] It explained that the NYISO was "not opposed to the eligibility of Additional CRIS MWs for a [CEE]"[8] and that allowing CEE for Additional CRIS MW appeared to be consistent with the underlying rationale for having a CEE for new Generator and UDR projects.[9] At the same time, the NYISO acknowledged that there would likely need to be specific tariff requirements for Additional CRIS MW because of the inherent differences between Additional CRIS MW projects, which may already be subject to an offer floor, and new entrants.[10] Moreover, the Additional CRIS MW issue had not been addressed earlier in the CEE proceeding and thus arguably was outside the scope of the CEE Compliance Filing.[11]

The Commission ultimately held that the applicability of the CEE to Additional CRIS MW was beyond the scope of the CEE proceeding. But it emphasized that the CEE "is intended to apply to any resource relying solely on market revenues."[12] Thus the Commission indicated that it would welcome a future filing to make Additional CRIS MW eligible to obtain a CEE.

This filing would make Additional CRIS MW eligible for a CEE for the first time. As was anticipated in 2015, it includes new tariff language to address the differences between

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[5] *Id*. *citing PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 57 (2013).

[6] The Additional CRIS MW rules were accepted by the Commission in May 2015. *See New York Independent System Operator, Inc*., Docket No. ER15-1281-000 (May 6, 2015) (delegated letter order).

[7] *See* New York Independent System Operator, Inc., *Compliance Filing*, *Request for Commission Action by May 14, 2015 and Request for Limited Waiver*, Docket No. ER15-1498-000 (April 13, 2015).

[8] *Consolidated Edison Co. of New York, Inc. v. New York Independent System Operator, Inc*., 152 FERC ¶ 61,110 at P 63 (2015) (quoted language is the Commission's summary of the NYISO's statements.)

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id*. at P 72.

Additional CRIS MW and new entrants. At their core, however, the new Additional CRIS MW CEE provisions are designed to allow Additional CRIS MW projects that "rely solely on market revenues" to obtain an exemption under the BSM Rules. The underlying objective is to exempt unsubsidized pure merchant investment in supply from the BSM Rules because the developers of such projects should have competitive incentives to enter the wholesale market based on their own expectations of market conditions. The Commission's precedent accepting the CEE clearly indicates that such investments should not be mitigated.

Specifically, the NYISO is proposing eligibility criteria for Additional CRIS MW based on the mitigation status of existing CRIS MW associated with the Examined Facility seeking Additional CRIS MW. The general rule is that an Examined Facility that is currently subject to an Offer Floor, or that only received an exemption because it passed the "Part A" test,[13] is not eligible to request a CEE for Additional CRIS MW. This general rule is more specifically expressed in the NYISO's proposed tariff revisions as a multi-part test. Under the proposed language, an Examined Facility would only be eligible to be evaluated for a CEE for Additional CRIS MW if it: (i) obtained exempt CRIS MW prior to November 27, 2010, or (ii) "Commenced Construction" in a Mitigated Capacity Zone ("MCZ") before the MCZ was proposed; or (iii) was previously determined to be exempt from mitigation under the "Part B" test; or (iv) was originally determined to be exempt under the CEE; or (v) (a) accepted CRIS MW is greater than or equal to 95 percent of its maximum output with an Offer Floor; and (b) an amount of UCAP that it has cleared in twelve monthly spot auctions is greater than or equal to its CRIS MW multiplied by one minus the Resource's Equivalent Demand Forced Outage Rate ("EFORd").

The proposed criteria are consistent with existing rules for proposed new projects and with Commission precedent addressing BSM Rules. If Additional CRIS MW is associated with capacity that was grandfathered from mitigation at the time that the BSM Rules were first applied in a particular MCZ it is reasonable to allow the Additional CRIS MW to be grandfathered for the same reason that the grandfathering rules were initially put in place. Proposed criterion (iii) would allow Additional CRIS MW associated with capacity that was initially found to be economic under the "Part B" test to seek a CEE.[14] It is also reasonable to

[13] The NYISO conducts two economic evaluations to determine whether entrants should be subject to an Offer Floor under Section 23.4.5.7.2 of the Services Tariff. The "Part A" test is designed to exempt new entrants as long as there is a reasonable balance between supply and demand. It compares the forecast of capacity prices in the first year of an Examined Facility's operation to the "Default Offer Floor," which is 75 percent of the net [cost of new entry ("CONE")] of the hypothetical unit modeled in the most recent Demand Curve reset, such that a new entrant is exempted if the price forecast for the first year is higher than the Default Offer Floor. Under the Part B test, the NYISO examines the economics of individual entrants. It compares a forecast of capacity prices in the first three years of an Examined Facility's operation to the net CONE of the Examined Facility, so that a new entrant will be exempted "if the price forecast for the three years is higher than the net CONE of the Examined Facility."

[14] A request for Additional CRIS MW where the initial CRIS MW were previously exempted only under Part A would not be eligible to seek a CEE in order to avoid gaming. For example, a Developer could seek to circumvent the BSM Rules by building a 500 MW plant, initially seeking CRIS for only 10 MW (since a smaller quantity of MW would be more likely to pass the Part A test), and then

allow Additional CRIS MW associated with capacity that originally received a CEE to apply for a CEE (proposed eligibility criterion "(iv)"). Proposed criterion "(v)" would make Additional CRIS MW associated with existing installed capacity that has proven to be economic by clearing in capacity auctions to be eligible for a CEE. The proposed "greater than or equal to 95 percent" of CRIS MW restriction is another "anti-segmenting" measure intended to prevent gaming.

The NYISO's proposed eligibility criteria collectively ensure that applicants that should be eligible to seek a CEE under Commission policy and precedent will be able to do so, while ensuring that the CEE cannot be combined with segmenting or phasing a project in order to game the Part A and Part B tests. The Commission should therefore find that they are just, reasonable, and not unduly discriminatory.

In addition to the new eligibility criteria, the NYISO is proposing to evaluate Additional CRIS MW using the same rationale and criteria that are found in the existing CEE rules for proposed new projects. Additional CRIS MW, like proposed new projects, will be required to maintain compliance with all CEE obligations, *i.e.*, that they not enter into contracts with Non-Qualifying Entry Sponsors, until the later of: (a) the time that the project demonstrates increased output associated with the Additional CRIS MW, *i.e.*, through a DMNC test for a Generator or an increase in total transfer capability at the interface for UDR projects, as a result of the uprate associated with the Additional CRIS MW; and (b) the Class Year or the transferred CRIS at the same location is completed. This change is necessary to ensure that Additional CRIS MW projects will not be permitted to enter into a non-qualifying contractual relationship before entering the market. New Generators and UDR projects currently have very similar, Commission-accepted, obligations to maintain their eligibility for a CEE.

Finally, the NYISO has proposed various other adjustments to the existing CEE rules to address the attributes of Additional CRIS MW projects, *e.g.,* establishing a separate Certification and Acknowledgement form for Additional CRIS MW projects. These changes are noted in Part III below.

B. "Competitive and Non-Discriminatory Hedging Contracts"

Under the currently effective BSM Rules, a project is only eligible for a CEE if it certifies that it does not have, and will not enter into, any "non-qualifying contractual relationships" with a "Non-Qualifying Entry Sponsor." This rule ensures that CEEs are only granted to pure merchant resources that rely solely on market revenues. The currently effective rules also specify that various types of contracts are allowable and will not disqualify an applicant from obtaining a CEE. The Commission has held that the existing list of allowable

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asking for the remaining 490 MW to be treated as "Additional CRIS MW" which would then be evaluated only for the cost of the "incremental" MW (*i.e.,* $0).

contracts is 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."[15]

The NYISO is now proposing to add a new type of arrangement to the "allowable contracts" list, *i.e.,* "Competitive and Non-Discriminatory Hedging Contracts." Both LSEs and suppliers often enter into competitive, short-term hedging contracts for energy and capacity. The NYISO's understanding is that this is of particular importance to developers of projects in New York because the NYISO does not administer a multi-year "forward" capacity market. Nonetheless, the NYISO is aware that there is a robust secondary market where load and supply enter into forward bilateral contracts. Stakeholders have contended, and the NYISO agrees, that competitive bilateral contracts can be beneficial risk management tools. Further, both the NYISO and its stakeholders believe that modifying the CEE rules to allow a Generator to enter into Competitive and Non-Discriminatory Hedging Contracts with a Non-Qualifying Entry Sponsor can facilitate the repowering and replacement of existing generation by allowing such repowering and replacement projects to qualify for a CEE.[16] The NYISO's proposal would also require that in order to be "allowable" contracts, hedging arrangements must be awarded through non-discriminatory, open, and competitive procurements and have other structural features that would prevent such contracts from being used to suppress capacity market prices. Consequently, the NYISO's proposed enhancement would support economic development and could facilitate New York State' ability to achieve certain environmental policy goals while guarding against the kind of "subsidy" concerns that would trigger a need for mitigation under Commission precedent.

As defined in these revisions, "Competitive and Non-Discriminatory Hedging Contracts" will be limited-term arrangements obtained through open, competitive, and non-discriminatory procurement processes. The maximum term of such contracts would be three years. Both new and existing resources would have to be eligible to satisfy the procurement's requirements. The selection process must not give a preference to new resources. It must not use indirect means to discriminate against existing capacity. The requirements must be fully objective and transparent. Contract awards must be determined based on the lowest offers received from qualified bidders. There must be no restriction on the technology used by resources obtaining the contract. The NYISO would ensure that that procurement process meets these requirements by reviewing the terms of the procurement. The proposal also requires the entity seeking the CEE to obtain from the Non-Qualifying Entry Sponsor issuing the contract, and to submit to the NYISO, an executed

[15] *Consolidated Edison Co. of New York, Inc. v. New York Independent System Operator, Inc*., 150 FERC ¶ 61,139 at P 101 (2015).

[16] It is expected that there will be significant interest in repowering and replacing existing generation in New York in the coming years given the State's ambitious environmental policy goals. In particular, New York recently enacted the Climate Leadership and Community Protection Act (the "CLCPA") which requires that that seventy percent of energy consumed in New York State be produced by renewable resources by 2030. By 2040 energy consumed in the State must be completely emissions free.

certification and acknowledgment form, modeled on the previously accepted from for new Generators and UDR projects.

The NYISO respectfully submits that its proposal to treat Competitive and Non-Discriminatory Hedging Contracts as allowable contracts is just, reasonable, and not unduly discriminatory. The NYISO's proposed requirements and review procedures will ensure that such contracts are like other allowable contracts and that applicants who enter into them will continue to rely solely on market revenues. Given that the NYISO's proposed safeguards will prevent Non-Discriminatory Competitive Hedging Contracts from being vehicles for subsidies that could contribute to capacity price suppression they should be allowable. Doing otherwise would unnecessarily narrow the scope of the CEE in a manner that could impede investment in repowering and replacement projects.

The NYISO is mindful that the Commission previously rejected a proposal to treat any contract providing a financial hedge with a Non-Qualifying Entry Sponsor as an allowable contract.[17] That rejection was based on the fact that "no justification" had been offered for including such contracts on the allowable list. By contrast, this filing has demonstrated why it is appropriate to allow CEE applicants to enter into Competitive and Non-Discriminatory Hedging Contracts.

The proposed tariff revisions that would define when Competitive and Non-Discriminatory Hedging Contracts are allowable, including the certification requirements, are noted in Part III of this filing below.

C. Proposed Enhancements to Rules Governing Failures to Submit Information, the Withdrawal of CEE Requests, and the Revocation of CEEs

The BSM Rules currently provide that if a CEE applicant fails to submit required information in a timely manner, or seeks to withdraw a CEE request, or if a previously granted CEE is revoked because of the submission of false or misleading information that was pertinent to its CEE request, that the Examined Facility in question would automatically be subject to the Mitigation Net CONE Offer Floor. The NYISO believes that it would be a more appropriate balance going forward to allow entities that become ineligible to seek, or that lose a previously granted, CEE to avoid receiving the Default Offer Floor if the NYISO finds that it would not have required the CEE because the Examined Facility would qualify for an exemption under the Part A Test or Part B Tests. Only if such an Examined Facility did not pass either test would it be prospectively subject to an Offer Floor. Moreover, to the extent that such an Examined Facility does not qualify for an exemption under those tests it would be more appropriate to set its Offer Floor at the lesser of its Unit Net CONE and Mitigation Net CONE as is done for other Examined Facilities that do not pass the Part A or Part B Tests.[18]

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[17] *Id*. at P 103.

[18] *See* Services Tariff, Section 23.2.1 definition of "Offer Floor" (establishing the "lesser of" rule for establishing Offer Floors) and Section 23.4.5.7.6.5 ("lesser of" rule for Additional CRIS MW).

The original rationale for having non-compliance with information requests and withdrawals trigger automatic mitigation was the assumption that it would not be practicable for the NYISO to conduct exemption evaluations for resources that were not included in such evaluation from the outset. It has subsequently become clear, however, that the NYISO is able to include such projects in Part A and Part B Test analyses, and has done so in each Class Year that has included CEE requests. This will be even more true in the future if various improvements to the NYISO's Class Year processes are adopted.[19] There is thus no longer a need to subject projects that withdraw CEE requests to automatic mitigation.

Similarly, the NYISO initially believed that subjecting entities that obtained CEEs based false or misleading information to automatic mitigation was an appropriate deterrent measure. However, the NYISO now believes that subjecting an Examined Facility that has made such a submission but is, nevertheless, able to pass the Part A or Part B tests to an Offer Floor would needlessly harm consumers by potentially increasing capacity prices unnecessarily. To be clear, it is critically important that CEE applicants submit complete and accurate information to the NYISO.[20] But the Services Tariff already provides that submitting false or misleading CEE information will result in a revocation of a previously granted CEE and trigger a referral to the MMU and the Commission's Office of Enforcement.

In addition, the NYISO is proposing that Examined Facilities that fail to provide needed information (or otherwise to cooperate in the CEE process) or that provide false or misleading information be ineligible to seek a CEE in the future. This change will further ensure that the consequences of submitting false or misleading information are borne by the entity responsible for doing so and are not shifted to consumers. They are therefore just, reasonable, and not unduly discriminatory and should be accepted by the Commission.

D. Proposed Transitional Rule for Class Year 2019 CEE Requests

The NYISO's Class Year 2019 interconnection study process began in August but is likely to continue until mid-2020. It is likely that there are Class Year 2019 projects that are currently ineligible for a CEE, or that were potentially eligible but did not request a CEE because they were unwilling to risk being assigned the Default Offer Floor if they had to withdraw a CEE request, but that would consider requesting a CEE if the Commission accepts the CEE enhancements proposed in this filing. Given that Commission precedent is clear that projects

[19] On December 19, 2019, the NYISO filed a number of proposed tariff revisions to expedite and enhance the efficiency of its interconnection processes. *See* New York Independent System Operator, Inc., *Proposed Tariff Revisions Regarding Interconnection Process Improvements*, Docket No. ER20-638-000 (December 19, 2019).

[20] In addition, the existing rule that Examined Facilities that fail to submit information necessary for the NYISO to analyze them under the Part A and Part B Tests will automatically be subject to the Default Offer Floor would continue to apply. *See* Services Tariff Section 23.4.5.7.3.4. Thus, a CEE Applicant that submits incomplete, false, or misleading information would only be eligible to receive an exemption under the Part A or Part B tests if has provided complete and accurate information necessary for the NYISO to do so. Otherwise, the applicant would be subject to the Default Offer Floor.

that rely solely on market revenues should not be subject to mitigation there is every reason to ensure that potentially eligible projects are able to obtain CEEs. Therefore, the NYISO is proposing a one-time exception from the standard deadline for submitting CEE applications. For Class Year 2019 member projects only, the NYISO is proposing to accept CEE applications after the normal deadline, which is very likely to arrive before the Commission acts on this filing, provided that such requests are submitted within fifteen calendar days of the Commission's issuance of an order accepting this filing. The NYISO believes that this will give potential applicants sufficient time to apply for CEEs while also leaving the NYISO sufficient time to review their applications without disrupting its administration of the Class Year process or the BSM Rules. The proposed change is therefore just, reasonable, and not unduly discriminatory.

As noted below, in Part III the special transitional rule for Class Year 2019 is being proposed to be added to Section 23.4.5.7.9.3.2 of the Services Tariff.

III. Description of Proposed Tariff Revisions

The NYISO is proposing to revise Services Tariff Section 23.2.1 to add a definition for "Competitive and Non-Discriminatory Hedging Contract." The structure and purpose of this definition is discussed above in Part II.B. A reference to Competitive and Non-Discriminatory Hedging Contracts would also be added to the list of allowable contracts in Section 23.4.5.7.9.1.3. For clarity and convenience, the NYISO is also proposing to insert into Section 23.2.1 the existing definition of "Non-Qualifying Entry Sponsor" and strike it from section 2.4.5.7.9.1.1. of the Services Tariff.

The NYISO is proposing to revise Services Tariff Section 23.4.5.7.6, which governs exemption and Offer Floor determinations for Additional CRIS MW, to add a cross reference to the new CEE provisions applicable to Additional CRIS MW.

The NYISO would revise the first paragraph of Section 23.4.5.7.9.1 to clarify that requests for CEEs by Additional CRIS MW projects would be governed by new Section 23.4.5.7.9.6, in addition to applicable portions of Sections 23.4.5.7.9.1 through .5.

Services Tariff Section 23.4.5.7.9.1 would also be amended in various places to streamline references to "Generators or UDR projects" to "Examined Facility" when appropriate. Other clarifying changes would eliminate any possible ambiguity as to when tariff language applies to the Developer of an Examined Facility, or an affiliate of the Developer, instead of to the Examined Facility itself (*e.g.,* to clarify that the NYISO will consider contracts entered into by a legal entity that owns a generating facility rather than the facility itself.) The NYISO believes that the intent of the currently effective language is clear but its clarifications should eliminate any possible doubt.

In addition, the NYISO is deleting language describing "Non-Qualifying Entry Sponsors" from Section 23.4.5.7.9.1.2. As noted above, the NYISO is proposing to move that language to Section 23.2.1. It is also revising language in the same subsection to clarify what it means for a contract to constitute an "indirect" non-qualifying contractual relationship. These clarifications

are like several of the other parts of 23.4.5.7.9.1 that are described in the preceding paragraph. They would expressly state that conveying benefits to owners and developers of Examined Facilities or Additional CRIS MW, not just to a Generator or UDR project itself, can create "non-qualifying" relationships. This meaning is implicit in the existing tariff but would be made explicit by the proposed revisions.

Section 23.4.5.7.9.1.4 would be revised to add Competitive and Non-Discriminatory Hedging Contracts to the list of "allowable contracts" that will not disqualify an entity from obtaining a CEE.

Section 23.4.5.7.9.2 would be amended to specify which CEE applicants are required to use the existing certification and acknowledgment form, which must use the new form for Additional CRIS MW, and that an additional certification must be made in connection with Competitive and Non-Discriminatory Hedging Contracts. The Commission previously held that the CEE tariff provisions must include the text of the certification and acknowledgement form applicable to new entrants.[21] Given that the NYISO is proposing herein to use certification and acknowledgement processes in its review of CEE requests for Additional CRIS MW it follows that the text of the proposed new forms should be included in the tariff as well.

In addition, the NYISO is proposing certain revisions to the text of the existing form in Section 23.4.5.7.9.2. These amendments include the same kind of clarifications to specify when certification and acknowledgment obligations apply to developers, owners, and affiliates in addition to, or instead of, Examined Facilities themselves. New directives that certifying parties identify and provide details concerning certain contractual relationships in a schedule to the form have been added. The acknowledgement provisions would be updated to conform to the NYISO's proposed changes to the CEE revocation provisions. Certain other miscellaneous clarifications are also included.

Section 23.4.5.7.9.2.4 would be amended to expressly state that certifications and acknowledgements must be re-submitted every time a CEE applicant executes or revises a contract with a Non-Qualifying Entry Sponsor in addition to any time that the NYISO requests it (as under the currently effective tariff language).

Section 23.4.5.7.9.2.5 would be revised to eliminate any ambiguity that it is the developer or owner of an Examined Facility, as opposed to the Examined Facility itself, that must notify the NYISO if information in a submitted certification and acknowledgement ceases to be true. In addition, the NYISO is proposing to more precisely describe the deadline for submitting such notifications.

Section 23.4.5.7.9.2.6 would be clarified to expressly indicate that it is referencing "notifications" as described in Section 23.4.5.7.9.2.7.

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[21] *Consolidated Edison Co. of New York, Inc. v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,139 at P 79 (2015).

Section 23.4.5.7.9.2.7 describes the consequences of failing to provide information requested by the NYISO in the CEE process. The NYISO is proposing to clarify that a failure to cooperate with the NYISO will also trigger this provision. In addition, new language would specify that a failure to provide information, if certain conditions are not met, may result in an applicant ceasing to be eligible for a CEE but will not result in an automatic loss of eligibility for an exemption under the Part A or Part B Test (provided that the information needed for the NYISO to conduct those analyses has been provided). As discussed above in Part II.C, the NYISO has determined that subjecting capacity that can pass those tests to an Offer Floor would unnecessarily risk imposing costs on consumers and is not needed to deter non-compliance by CEE applicants. At the same time, the NYISO is proposing to add language to establish that an Examined Facility that loses its eligibility to seek a CEE because of a failure to provide information (or cooperate) will also be ineligible to seek a CEE in the future. The revised language would also make clear that a failure to provide timely information or cooperation would constitute a violation of the Services Tariff that will be reported to the MMU and the Commission's Office of Enforcement.

Language would be added to Section 23.4.5.7.9.3.1 and .2 to clarify when the deadline for submitting certification and acknowledgment forms and CEE requests would fall in relation to certain events in the Class Year interconnection process. Ministerial revisions would also reflect the fact that Additional CRIS MW would be eligible to seek a CEE and include the introduction of a separate form for Additional CRIS MW. The NYISO would also amend Section 23.4.5.7.9.3.2 to create the one-time exception to the CEE application deadline for Class Year 2019 projects that is discussed above in Part II.C.

Section 23.4.5.7.9.3.3 currently provides that Examined Facilities that request a CEE but then withdraw the request because they have entered into non-qualifying contractual relationships will automatically be subject to the Default Offer Floor. The NYISO is proposing to revise this section to provide that if the withdrawal request is received within two business days of entering into an impermissible contractual relationship then the Examined Facility would remain eligible for an exemption under the Part A or Part B Test. Moreover, even if the withdrawal were received after that deadline and an Offer Floor is applied the Offer Floor would be set at the lesser of Mitigation Net CONE or to Unit Net CONE (as is the NYISO's standard practice when setting Offer Floors). The rationale for this change is discussed above in Part II.C.

The NYISO is proposing a ministerial clarification to Section 23.4.5.7.9.4.1, to clarify that all Examined Facilities are covered by its posting requirement, not just Generators or UDR projects.

Section 23.4.5.7.9.5 governs the revocation of previously granted CEEs. As discussed above in Part II.C, the NYISO is proposing to eliminate the rule that revocations automatically result in the imposition of a Default Offer Floor. Instead, an entity that has a CEE revoked would still be eligible for an exemption if it passes the Part A or Part B test, provided that it has not also violated the information submission requirements for those tests. Consistent with the

NYISO's proposed treatment of CEE withdrawal requests (above), if an Offer Floor applies after a CEE is revoked it would be set at the lesser of Mitigation Net CONE and Unit Net CONE.

Proposed new Section 23.4.5.7.9.6.5 would establish a separate certification and acknowledgement form for Additional CRIS MW. The certification process is a key component of the NYISO's CEE determinations. As noted above, Commission precedent clearly indicates that it is necessary to include a separate certification and acknowledgment form in the tariff for Additional CRIS MW. The proposed new form for Additional CRIS MW is substantially the same as the existing form with minor adjustments necessary to reflect differences between new projects and Additional CRIS MW projects.

Similarly, proposed new Section 23.4.5.7.9.6.6 would create a separate acknowledgment and certification form pertaining to Competitive and Non-Discriminatory Hedging Contracts. This form would be executed by the entity that awarded the contract but the owner of the Examined Facility seeking a CEE would be responsible for ensuring that the form was submitted. The new form is modeled on the existing form for new Generators and UDR projects but includes necessary variations to reflect the identity, and potential non-FERC-jurisdictional status of the certifying entity.

Finally, the NYISO is proposing to amend: (i) Section 23.4.5.7 to clarify the applicability of Offer Floors imposed after the revocation of a CEE to subsequent small amounts of CRIS received under certain NYISO OATT provisions and to eliminate redundant language (namely, an unnecessary second use of the phrase "Offer Floors shall also cease to apply"); and (ii) Section 23.4.5.7.7 to clarify the extent to which certain existing grandfathering exemptions from the BSM Rules would apply to certain CRIS expiration scenarios governed by Section 25.9.3.1 of the OATT. Neither of these clarifications represents a substantive change. Both simply eliminate any potential ambiguity concerning the application and interpretation of these provisions.

IV. Informational Attachment Containing a Comprehensive Representation of Proposed Tariff Language

The NYISO is attaching, for informational purposes only, clean and blacklined versions of the instant tariff revisions which include all pending language, in Attachment H, that the NYISO has filed with the Commission. Attachments III and IV to this filing reflect the comprehensive version of Attachment H that was used in the development of this proposal to broadly inform the stakeholders on how the instant filing requires modification to the previously proposed rules. These include the proposed revisions submitted in the NYISO's ESR Compliance Filing[22] and its Section 205 Filing addressing Distributed Energy Resources ("DER

[22] New York Independent System Operator, Inc., *Compliance Filing and Request for Extension of Time of Effective Date*, Docket No. ER19-467-000 (December 3, 2018) ("ESR Compliance Filing").

Filing").[23] In general, these two filings requested effective dates for various proposed tariff amendments that were much later than the requested effective date for the CEE enhancements. There are also a very limited set of proposed tariff amendments pending before the Commission that are not included in Attachments I and II because the effective date requested by the NYISO in previous filings cannot be tied to a particular calendar date. For example, in the ESR Compliance Filing the NYISO filed a tariff amendment modifying the definition of "Examined Facilities" and had requested a more immediate effective date that was contingent on the status of the ongoing Class Year Study process at the time of FERC action on the proposed change.[24] This pending language was rejected by the Commission's order addressing the ESR Compliance Filing, dated December 20, 2019.[25] The NYISO notes that no changes are needed to the tariff base submitted in Attachments I and II of this filing. The NYISO will review the ESR Compliance Order to determine if there are any additional steps that need to be taken with regard to the Commission's rejection of the reinstatement of Category III language, Nonetheless, Attachments III and IV are being provided for informational purposes only and include a clean and blacklined version containing all pending tariff language that has been filed with the Commission by the NYISO regardless of its effective date captures the CEE enhancements proposed herein and integrates them into the existing comprehensive set of BSM Rules developed by the NYISO with its stakeholders. This comprehensive tariff language was used broadly throughout the stakeholder process that resulted in this filing to fully inform the stakeholders on the modifications this filing would make to the previously proposed tariff revisions.

V. Stakeholder Reservation of Rights Regarding Contested Pending Tariff Language

The proposed tariff revisions in this filing is made to "base" tariff sections that only include all previously accepted language and all language that is pending before the Commission with a specific effective date that precedes the requested effective date of the new revisions proposed with this filing. However, as discussed above, the design was developed using a broader set of tariff language that includes pending language that has a later requested effective date or a requested effective date that cannot be tied to a specific calendar date. Some of that tariff language, which is included in Attachments III and IV of this filing, was protested by certain stakeholders when it was initially filed with the Commission. The relevant language appears in the version of Services Tariff Section 23.2.1, which, as noted above, was just rejected by the Commission in the ESR Compliance Order.

There is no reason why the ESR Compliance Order's rejection of the disputed Category III language should prevent the adoption of undisputed new enhancements that are unrelated

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[23] New York Independent System Operator, Inc., *Proposed Tariff Revisions Regarding Establishment of Participation Model for Aggregations of Resources, Including Distributed Energy Resources and Proposed Effective Dates*, Docket No. ER19-2276-000 (June 27, 2019) ("DER Filing").

[24] *See* ESR Compliance Filing at Section X.B.

[25] *New York Independent System Operator, Inc.,* 169 FERC ¶ 61,225 (2019) ("ESR Compliance Order").

except for the fact that the same underlying tariff provision is implicated. During the stakeholder process that culminated in this filing, the NYISO clearly stated that it would not construe stakeholder support for the CEE enhancements proposed here as a change to positions stakeholders may have taken on pending revisions or as a waiver of arguments previously made to the Commission. The NYISO also indicated that it would inform the Commission that stakeholders who voted to support this filing did so with the understanding that they were not changing or waiving past positions or arguments regarding pending tariff revisions.

VI. Stakeholder Review and Approval

The tariff revisions included in this filing have been developed through an extensive stakeholder process that dates back more than year. The revisions were accepted by the NYISO's stakeholder Management Committee on November 20, 2019 by a unanimous vote without abstention, but with the express understanding and reservation noted in Part V above. They have also been approved by the NYISO's independent Board of Directors. The independent MMU was involved in the development of the proposed revisions and supports them.

VII. Requested Effective Date

The NYISO respectfully requests that the tariff revisions proposed in this filing be made effective February 19, 2020, the day immediately following the end of the standard notice period prescribed by FPA Section 205.

VIII. Service

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail an electronic link to this filing 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. Communications

Communications and correspondence regarding this filing should be directed to:

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X. Conclusion

For the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the proposed tariff changes identified in this filing without directing any modifications and make them effective as of the NYISO's requested date.

Respectfully submitted,

/s/ David Allen
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