

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Cricket Valley Energy Center, LLC

)

Docket No. ER17-1893-000

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with the Commission’s June 26, 2017 *Combined Notice of Filings* and with Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submit comments in the above-captioned proceeding. The NYISO requests that the Commission consider these comments in its evaluation of whether to grant Cricket Valley Energy Center, LLC’s (“CVEC”) request for a one-time, limited waiver of the deadline set forth in Section 23.4.5.7.9.3.2 of Attachment H of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).² The requested waiver would allow the NYISO to act on CVEC’s request for a Competitive Entry Exemption (“CEE”) under the NYISO’s “buyer-side” capacity market power mitigation rules (the “BSM Rules”). Absent a waiver, CVEC’s submission of materials to the NYISO would be impermissibly untimely.³

Consistent with its position on the request for a waiver of the same deadline submitted by Bayonne Energy Center, LLC (“BEC”) in Docket No. ER17-1652-000 (the “BEC Waiver

¹ See 18 C.F.R. §§385.212 and 213 (2016).

² See *Petition for Limited Waiver of Tariff Deadline and Request for Expedited Action*, Docket No. ER17-1652-000 (May 22, 2017) (“CVEC Petition”).

³ See CVEC Petition at 2.

Proceeding”)⁴ the NYISO does not oppose CVEC’s request and joins in urging the Commission to act on the request no later than August 1, 2017. A determination by that date would avoid potential disruptions to the NYISO’s Class Year Interconnection Facilities Study⁵ (“Class Year Study”) and BSM processes.⁶ As discussed below, the NYISO also reiterates here a request that it first made in the BEC Waiver Proceeding. Specifically, if the Commission decides to grant the CVEC, and/or BEC, waiver request, that it also briefly extend the deadline for CEE exemption requests (accompanied by the executed Certification and Acknowledgement)⁷ to similarly situated proposed new Examined Facilities in a Mitigated Capacity Zone that are members of Class Year 2017.

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.

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

⁵ 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.

⁶ 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.*

⁷ 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”.

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 tests⁸ 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.

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.*⁹ 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

⁸ 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).

⁹ *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) (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”).

Competitive Entry Exemption, renewable exemption, or a self-supply exemption, and the potential disruptions from extending one deadline would be magnified.¹⁰

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 almost three months after the tariff deadline.¹¹ However, given the specific circumstances and timing considerations relevant to this proceeding (which are also present in the BEC Waiver Proceeding,) granting CVEC's 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 CVEC's waiver request, (ii) the facts known to the NYISO at this time, (iii) the low potential for adverse market impacts, and (iv) the Commission's guidance in earlier waiver orders, the NYISO does not oppose CVEC's waiver request. The NYISO defers to the Commission on the question of whether CVEC has met its burden of proof under the four-part waiver analysis.

As noted above, the NYISO supports the request that the Commission act on CVEC's 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.¹² The NYISO would use its best efforts to complete both processes in a timely manner and in good order but, the further beyond August

¹⁰ *Id.*

¹¹ *See* CVEC Petition at 4.

¹² 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.

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.

In addition, as the NYISO requested with respect to BEC in the BEC Waiver Proceeding, if the Commission grants CVEC's waiver request it should issue a ruling that would provide a brief extension of the deadline, to a single specified date, for other eligible proposed new Generators and UDR projects that are members of Class Year 2017 to request a CEE and concurrently provide¹³ the required executed Certification and Acknowledgment.¹⁴ The tariff-established deadline for requesting a CEE is the same as the deadline for notifying the NYISO of intent to join a Class Year. For Class Year 2017, as CVEC's petition notes, that date was March 8, 2017.¹⁵ If the Commission were to waive that deadline for CVEC, other new entrants might be encouraged to seek deadline waivers of their own.¹⁶ But if such waivers were sought, and then granted after August 1, 2017, it would be as potentially disruptive and likely to cause an even greater delay to the NYISO's work under the BSM Rules and Class Year Study process as acting on CVEC's request after that date would. The NYISO's evaluation of a request for a CEE actually increases the amount of work it must perform to determine eligibility because it also must perform the balance of the due diligence under the BSM Rules.

¹³ See *supra* at n. [6].

¹⁴ The date of the first certification and acknowledgement by a Developer of an Examined Facility in Class Year 2017 is March 8, 2017. In addition to that requirement, the Services Tariff specifies that the NYISO "may request additional information and updated certifications at any time prior to a Generator's or UDR project's Entry Date. A Generator or UDR project that is granted an exemption pursuant to this Section 23.4.5.7.9, shall be required to submit an executed Certification and Acknowledgement form set forth in Section 23.4.5.7.9.2 of the Services Tariff, updated as appropriate, upon its Entry Date." See Services Tariff Section 23.4.5.7.9.3.1.

¹⁵ CVEC Petition at 4.

¹⁶ The NYISO made this same point in the BEC Waiver Proceeding and CVEC did in fact subsequently make this filing.

Therefore, if the Commission grants CVEC's request for a waiver of the deadline by which a proposed new Generator or UDR project was to have submitted, for the NYISO's receipt, a request and Certification and Acknowledgment, it should also rule that any additional requests for a CEE accompanied by the required Certification and Acknowledgment by other, similarly-situated proposed new Examined Facilities must be received before the later of: (i) six calendar days after the issuance of the order granting the waiver; or (ii) August 1, 2017, *i.e.*, CVEC's requested August 1, 2017 action date. The Commission has previously made similar rulings in other proceedings involving requests for waivers of NYISO tariff provisions in order to avoid potential undue discrimination.¹⁷ It should do the same here in order to treat all parties fairly and to preserve the NYISO's ability to administer the BSM Rules and Class Year process in a timely and orderly fashion.

The NYISO also respectfully requests that if the Commission grants the limited extension for other proposed new Examined Facilities that are members of Class Year 2017, it make clear that it is not altering any requirement other than the deadline by which they are to submit the request and required documentation for the NYISO's receipt. Therefore, the Developer as of March 8, 2017 should submit the request for a CEE and the Certification and Acknowledgment based on the facts as of March 8, 2017, and the Developer should also submit an updated

¹⁷ See, e.g., *New York Power Authority*, 139 FERC ¶61,157 at P 27 (2012) ("Further, for the reasons for which we grant NYPA's waiver request as outlined below, we find that this waiver applies equally to all other similarly situated responsible interface parties. We find that it would be unduly discriminatory to limit the applicability of this waiver to only certain affected responsible interface parties, as some of the commenters and the protestor contend. Therefore, we grant waiver to all similarly situated responsible interface parties, as described above, to permit the deadline for submission of the required data to be extended to and including four calendar days from the date of this order").

Certification and Acknowledgement based on the facts as of the date of the submission of the request.¹⁸

If the Commission grants the NYISO's request for a limited extension for such other similarly situated members of Class Year 2017, the NYISO would promptly post on its website a list of each such Generator or UDR project that requests a CEE and provides to the NYISO the required Certification and Acknowledgment and updated Certification and Acknowledgment.¹⁹

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 CVEC's request; and (iii) if it decides to grant the requested waiver, issue a ruling allowing other similarly-situated proposed new Examined Facilities a brief extension of the deadline to also submit a request for a CEE, to the NYISO, accompanied by the required Certification and Acknowledgment, for the reasons set forth above.

¹⁸ The Developer's provision of the updated certification is contemplated by and consistent with Section 23.4.5.7.9.3.1 of the Services Tariff.

¹⁹ See Section 23.4.5.7.9.4.1 of the Services Tariff.

Respectfully submitted,

/s/ Gloria Kavanah

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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 14th day of July, 2017.

/s/ *Mohsana Akter*

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