

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

Brookfield Energy Marketing L.P.)	
)	Docket No. ER18-1177-000
)	

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

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and comment on the *Petition for Limited Waiver* (“Petition”) submitted by Brookfield Energy Marketing LP (“BEM LP”) in the above-captioned proceeding. While the NYISO does not oppose BEM LP’s specific limited request, the NYISO respectfully requests that the Commission consider these comments in its determination regarding the relief requested.

I. Background

On March 23, 2018, BEM LP filed the Petition seeking a limited, one-time waiver of any and all applicable NYISO “rules, requirements, and/or guidance” so that “NYISO may treat BEM LP’s November 7, 2016 offer in the NYISO Installed Capacity (“ICAP”) Monthly Auction as if it were associated with BEM LP’s External Capacity Resource Interconnection Service (“External CRIS”) rights offer requirement.”²

¹ 18 C.F.R. §§ 385.212 and 385.214 (2012).

² Petition at 1. *See also* Petition at 6. Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO’s Open Access Transmission Tariff (“OATT”), and if not defined therein, then the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff.

The Petition explains that BEM LP holds External CRIS Rights that allow it to import capacity into the New York Control Area (“NYCA”) from resources located outside of the NYCA.³ External CRIS Rights provide the holder with a long-term ability to import capacity without being subject to certain requirements that would otherwise apply, including an annual deliverability evaluation (within the NYCA) and the obligation to obtain “import rights.”⁴ In order to obtain this long-term right, an entity must commit to supply the specified MW of External Installed Capacity to the NYCA for a minimum Award Period of five years.⁵ Requesting entities that are awarded External CRIS Rights are required to offer the full number of MW for each month that they hold External CRIS Rights within the offer cap specified in the OATT.⁶

Among other things, Section 25.7.11.1.3.1 establishes consequences that apply if an entity fails to satisfy the offering requirements. Specifically, in each instance that an entity fails to offer capacity (a “Supply Failure”) in accordance with tariff requirements, the entity incurs a financial penalty. If the entity commits a Supply Failure four times within the period for which the External CRIS Rights were awarded (the “Award Period”), then the External CRIS Rights will be terminated.⁷ After termination, the terminated MW of External CRIS Rights would no

³ Petition at 1.

⁴ Import rights are only available on a Capability Period or monthly basis, and only up to the quantity of MW specified to be available at the External Interface. Further, Market Participant’s request up to such established quantity must be received prior to other Market Participants’ request for them. *See, e.g., Installed Capacity Manual* Section 4.9.2.4 at pp. 4-34 through 4-38.

⁵ *See* Section 25.7.11.1 of the OATT.

⁶ *Id.*; *see also* Sections 25.7.11.2 and .3 of the NYISO OATT.

⁷ *See Joint Compliance Filing of the New York Independent System Operator, Inc. and the New York Transmission Owners*, Docket No. ER04-449-020 at 6 (October 28, 2009) (“External CRIS Rights under both a Contract Commitment and a Non-Contract Commitment will be terminated when an entity fails to meet its commitment four times within the initial Award Period, or four times within each

(continued . . .)

longer be modeled as existing in deliverability studies, such as those performed for proposed new resources interconnecting in the NYCA and for the shorter-term import rights.⁸ They would potentially be available to Market Participants as new External CRIS Rights or as shorter-term Capability Period or monthly import rights.

The Petition describes the specific requirements that entities must follow in order to associate their offers in the ICAP market with the capacity offer obligations that apply to External CRIS Rights. The Petition acknowledges that on November 7, 2016, BEM LP did not include the required “Right #” value when it submitted an offer into the NYISO’s ICAP Monthly Auction for January 2017. BEM LP asserts that this failure was due to human error and was not discovered until it was too late to be remedied through other means. Because of its oversight, BEM LP’s offer was not associated with its External CRIS rights which resulted in a Supply Failure under the NYISO OATT.⁹

As BEM LP notes, absent a waiver of the applicable NYISO rules, requirements, and guidance, “NYISO is not able to treat BEM LP’s offer in the November 7th Monthly Auction (that did not include the Right #) as associated with the External CRIS Rights offer obligation” for the January obligation month.¹⁰ The consequences for BEM LP if a waiver is not granted include “the potential imposition of penalties” and a Supply Failure (four of which result in termination of its External CRIS Rights.)

(. . . continued)

subsequent renewal period.”) *See also* Letter Order, December 28, 2009 (accepting October 28 Joint Compliance Filing).

⁸ *See* Section 25.7.8 of the OATT.

⁹ *See* Petition at 2-4.

¹⁰ Petition at 4.

II. 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. In particular, the NYISO is responsible for awarding External CRIS Rights and monitoring compliance with applicable tariff requirements by the entities to whom such Rights are awarded. In this proceeding, BEM LP is requesting waiver of NYISO requirements, rules, and guidelines established by, and under, the NYISO OATT. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, therefore, should be permitted to intervene with all the rights of a party.

III. Comment

The NYISO recognizes that the Commission's evaluation of a waiver request is highly dependent on the specifics of a particular request, and the Commission has recognized, therefore, that the granting of a waiver request is not precedent for granting future waiver requests.¹¹ The Commission has further recognized that a waiver of tariff requirements should not be construed as having any impact on the applicability of the same requirements in any other scenario.¹²

Based on the specific facts and circumstances set forth in the Petition, the NYISO does not oppose but takes no position on the merits of BEM LP's request for a limited, one-time

¹¹ See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P17 (noting that the granting of the requested waiver "is based on the specific facts and circumstances of the request"); see also, *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (2013) (noting that "our grant of waiver is limited to the facts and circumstances of the case before us").

¹² See *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P16 (2013) (noting that despite granting the requested waiver, "we do not intend that NYISO's regulatory milestones be taken lightly."); *Innovative Energy Systems, LLC*, 131 FERC ¶ 61,066 at P7 (2010) (noting that despite granting the requested waiver, "we emphasize the importance of meeting financial security deadlines and note that in the future, we expect parties to arrange for deposits to be submitted in sufficient time to meet the requirements of their tariffs.").

waiver. In this instance, BEM LP's failure to satisfy the offer requirement did not affect market outcomes. Because BEM LP did not associate its offer with its External CRIS rights, the NYISO's software identified them as import rights. Import rights are limited in number at each interface. However, since there were remaining MW of import rights at the interface for the January obligation month, the failure did not impair another Market Participant's capacity import offer. If the waiver request is granted as requested by BEM LP, the NYISO would be permitted to treat BEM LP's November 7, 2016 offer in the NYISO Monthly Auction as if it had been associated with its External CRIS Rights offer obligation for January 2017.

While the NYISO takes no position on whether BEM LP has satisfied the Commission's standards for granting waivers, it is important that the Commission continue to reinforce the importance of tariffs and ISO Procedures because even deadlines enhance certainty and transparency.

IV. Communications and Correspondence

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

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V. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) grant this motion to intervene, and (ii) consider these comments in making its decision on the Petition.

Respectfully submitted,

/s/ Sara B. Keegan

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April 13, 2018

cc: Anna Cochrane
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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 13th day of April 2018.

/s/ Joy A. Zimmerlin

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