

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

<b>Bayonne Energy Center, LLC</b>	)	
	)	<b>Docket No. ER18-1301-000</b>
	)	

**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,<sup>1</sup> and the Commission’s *Combined Notice of Filings* issued April 5, 2018, the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and comment on the *Petition of Bayonne Energy Center, LLC for Limited Waiver, Request for Shortened Comment Period, and Request for Commission Action by May 7, 2018* (“Petition”) that was submitted on April 4, 2018 in the above-captioned proceeding.

The NYISO takes no position as to whether Bayonne Energy Center, LLC (“BEC”) has satisfied the criteria for obtaining waiver requests.<sup>2</sup> The comments herein focus on providing the Commission with information concerning the scope, nature, and potential implications of the Petition. As discussed below, the Petition would require the waiver of many interconnection requirements, although their impact could largely be managed by specific Commission guidance as discussed in Section IV.C. With respect to the buyer-side capacity market power mitigation

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.214 (2017).

<sup>2</sup> See, e.g., *Emera Energy Servs. Subsidiary No. 6 LLC*, 159 FERC ¶ 62,026 (2017) (applying the Commission’s traditional four prong waiver analysis, which considers whether: (i) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences such as harming third parties.

measures (“BSM Rules”),<sup>3</sup> however, the Petition would alter the implementation of the rules and could affect the evaluations performed for entities other than Bayonne Energy Center II (“BEC II”) under certain circumstances. Specifically, if Class Year 2017 does not bifurcate, waivers requested in the Petition would require clarification of how BEC II would be reflected in the BSM Rule determinations for other Examined Facilities.<sup>4</sup> The potential implications of the requested waivers for the NYISO and for other stakeholders will be less significant if Class Year 2017 becomes a bifurcated Class Year in accordance with Section 25.5.10 of the NYISO OATT.<sup>5</sup>

These comments ask that if the Commission grants the waivers requested by the Petition that it also: (i) provide the NYISO, and in one instance the independent Market Monitoring Unit (“MMU”), with implementation guidance on six specific issues; and (ii) emphasize that the NYISO’s existing Class Year and BSM Rules will continue to apply to all Developers, Examined Facilities, and Market Participants in the future, except to the limited extent that may be specifically delineated by the Commission in light of the specific facts presented by the Petition.

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<sup>3</sup> The BSM Rules are set forth in Section 23.4.5.7, *et seq.* of the Services Tariff.

<sup>4</sup> Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO’s Open Access Transmission Tariff (“OATT”) or the Market Administration and Control Area Services Tariff (“Services Tariff”).

<sup>5</sup> A “bifurcated” Class Year referred to in the tariff provisions establishing the Class Year rules and the BSM Rules, is referred to herein as a “Bifurcated Class Year.” *See, e.g.*, OATT Section 25.5.9, and Services Tariff Section 23.4.5.7. While the “bifurcation” provisions recently accepted by the Commission substantially expedite the Class Year process for certain projects, BEC is essentially asking the Commission to accelerate the process even further. *See* Letter Order, Docket No. ER18-80-000 (December 7, 2017). The rules established Docket No. ER18-80-000, including the bifurcation provisions, are referred to herein as the “Comprehensive Queue Improvements.”

## **I. COMMUNICATIONS AND CORRESPONDENCE**

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## **II. BACKGROUND**

### **A. The NYISO's Class Year Process and BSM Rules**

#### **1. Class Year Study Process**

The NYISO's interconnection processes related to the interconnection or modification of Large Facilities are set forth in Attachments S and X to the OATT. Attachment X contains the procedures for processing interconnections of Large Facilities, providing for up to three successive Interconnection Studies of each proposed project. The final study in the interconnection process is the Class Year Interconnection Facilities Study ("Class Year Study").<sup>6</sup> The Class Year Study is a detailed study that evaluates the cumulative impact of a group of projects that have completed similar milestones—a "Class Year" of projects.<sup>7</sup> The Class Year Study identifies the upgrade facilities needed to reliably interconnect all the projects in a Class

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<sup>6</sup> See OATT Section 30.8.

<sup>7</sup> The details of the Class Year Study, including its methodologies and processes are set forth in Attachment S of the OATT.

Year. Each Class Year Study allocates the cost of System Upgrade Facilities (“SUFs”) and System Deliverability Upgrades (“SDUs”) identified in the study among the projects in the Class Year in accordance with the cost allocation methodologies set forth in Attachment S.

Attachment S also sets forth the detailed procedures for the identification and cost allocation of SUFs required for a project to reliably interconnect to the system and thereby provide Energy Resource Interconnection Service (“ERIS”).<sup>8</sup> For those Class Year Projects that elect Capacity Resource Interconnection Service (“CRIS”),<sup>9</sup> Attachment S provides for the evaluation of a project’s Deliverability and the identification and cost allocation of SDUs required for a project’s proposed capacity to be fully deliverable. Cost allocations are presented to the NYISO’s stakeholder Operating Committee for approval, together with the Class Year Study reports.

Approval by the Operating Committee triggers the Class Year decisional process. This decisional process begins with the NYISO’s issuance of a “Notice of SDUs Requiring Additional Study” which is to occur “as soon as practicable” after the NYISO presents the results of the full preliminary Class Year Study to stakeholders and the Operating Committee approves those results.<sup>10</sup> Attachment S provides for further decisional periods during which Class Year Projects accept or reject their Project Cost Allocations (the costs allocated to a Class Year Project for

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<sup>8</sup> ERIS is basic interconnection service that allows a Developer to interconnect its facility to the New York State Transmission System or Distribution System in accordance with the NYISO Minimum Interconnection Standard to enable the New York State Transmission System or Distribution System to receive electric energy from the facility.

<sup>9</sup> CRIS is interconnection service that allows a Developer to interconnect its facility to the New York State Transmission System or Distribution System in accordance with the NYISO Deliverability Interconnection standard, which allows participation in the NYISO’s Installed Capacity market to the extent of the facility’s deliverable capacity.

<sup>10</sup> See OATT Sections 25.5.10.1 and 25.5.10.2.

SUFs and SDUs, as applicable), post any required Security and satisfy Headroom obligations, as applicable.

The NYISO's recently accepted Comprehensive Queue Improvements included significant improvements to the Class Year process. The revisions were developed with extensive input from stakeholders including BEC.<sup>11</sup> Of relevance here, these improvements included the introduction of Class Year bifurcation provisions.

These new rules were established to avoid imposing unnecessary delays on the completion of Class Year projects unaffected by additional SDU studies by creating an “exit ramp” that would allow such projects to complete the Class Year Study early. Class Year projects that take advantage of these provisions may “exit” the Class Year before additional SDU studies are completed, while projects that elected to proceed with additional SDU studies would continue with those evaluations. If the Class Year bifurcates in this manner, the Class Year Study separates into two decision and settlement phases. The two Class Year phases are referred to as “Class Year X-1” (the projects that elect to exit early and are not subject to the additional SDU studies) and “Class Year X-2,” (the projects that elect to remain in the Class Year or that are subject to the additional SDU studies). “X” is the year of the Class Year Start Date, *e.g.*, of relevance to this filing, potential Class Year 2017-1 and Class Year 2017-2.

The NYISO's interconnection process permits certain projects to become operational prior to the completion of a Class Year.<sup>12</sup> The OATT allows projects to engage in “Limited

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<sup>11</sup> See Petition at 16. See also Bayonne Energy Center, LLC, *Motion to Intervene in Support of NYISO Proposed Tariff Revisions*, Docket No. ER18-80-000 (November 6, 2017).

<sup>12</sup> See OATT Section 30.11.4.

Operations”<sup>13</sup> prior to the completion of required upgrades if a study determines that such operation is consistent with applicable reliability standards.<sup>14</sup> However, projects cannot obtain CRIS and participate in the capacity market until they accept their cost allocation and post Security for any required SDUs from a completed Class Year,<sup>15</sup> in accordance with OATT Section 25.3.1.2.

## **2. BSM Rules**

The BSM Rules are established by Attachment H to the Services Tariff. The BSM Rules are closely aligned with, and are applied in close coordination with, the Class Year decision and settlement phases.<sup>16</sup> The initial determination for each Examined Facility is issued prior to the commencement of the Class Year Initial Decision Period.<sup>17</sup> Final exemption or Offer Floor determinations are issued after the Class Year is determined to be complete in accordance with

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<sup>13</sup> See OATT Section 30.12.3. Limited Operations includes the ability to participate in the Energy and Ancillary Services Markets.

<sup>14</sup> The project must also satisfy the requirements set forth in OATT Section 30.12.3.

<sup>15</sup> In a Bifurcated Class Year, Class Year X-1 is “completed” for purposes of OATT Section 25.3.1.2 upon the date on which the Bifurcated Decision Period for Class Year X-1 projects expires (for those projects that accept their Project Cost Allocations and post Security for same as part of Class Year X-1). In Class Year X-2 or in a Class Year that does not bifurcate, if any Class Year projects elect to reject their cost allocations in the Initial Decision Period, the NYISO recalculates the Project Cost Allocations for the remaining Class Year members. This process continues through subsequent rounds until all remaining Class Year Projects accept their cost allocation and post required security, at which time the Class Year is completed for purposes of OATT Section 25.3.1.2.

<sup>16</sup> This close relationship has been the case since the inception of the rules. In 2010, the NYISO made major revisions to the BSM Rules to more fully align them with the Class Year procedures, timetables, and deadlines under OATT Attachment S. See *New York Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,178 (2010), 134 FERC ¶ 61,083 (2011), 136 FERC ¶ 61,077 (2011).

<sup>17</sup> Services Tariff Section 23.4.5.7.3.3.

Attachment S.<sup>18</sup> As described in the NYISO’s posted “Narrative and Numerical Example” concerning the application of the BSM Rules:

The NYISO provides a series of exemption or Offer Floor determinations to each Examined Facility remaining in the Class Year, in a process that is coordinated with the Class Year Project Cost Allocation [(“PCA”)] process, set forth in Attachment S to the OATT. The NYISO provides the initial exemption or Offer Floor determination (Round 1) prior to the NYISO’s Initial Project Cost Allocation (PCA). The OATT Attachment S PCA process gives the developer 30 days to accept or reject its PCA. If the project rejects its PCA, it is no longer in the Class Year for CRIS. For subsequent rounds of the Class Year, and the NYISO recalculates its BSM determinations, removing all Examined Facilities that are removed from the Class Year.<sup>19</sup>

The BSM Rules thus allow the NYISO’s “Part B Test”<sup>20</sup> determination to include cost information from the Class Year process.

The NYISO made certain tariff modifications to the BSM Rules in the Comprehensive Queue Improvement filing. These modifications clearly establish when various determinations are to be made if a Class Year bifurcates. These tariff provisions also address how the BSM Rule determinations treat projects that elect to exit a bifurcated Class Year early—by accepting their Project Cost Allocations (if any) and posting required security as members of Class Year X-

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<sup>18</sup> As noted above, the BSM Rules now include provisions describing the application of these provisions in a non-bifurcated Class Year and in a Bifurcated Class Year.

<sup>19</sup> The description is of the process for a Class Year that is not bifurcated. As noted in these comments, the bifurcation rules are also interrelated and closely aligned with the BSM Rules. *See Narrative and Numerical Example* (Dec. 1, 2016) at Section 6.3, “BSM Determinations in Rounds Timed with the Class Year Process,” Available at <[http://www.nyiso.com/public/webdocs/markets\\_operations/services/market\\_monitoring/ICAP\\_Market\\_Mitigation/Buyer\\_Side\\_Mitigation/Numerical\\_Example/BSM\\_Narrative%20and%20Numerical%20Example%20Updated%20December%201%202016.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/market_monitoring/ICAP_Market_Mitigation/Buyer_Side_Mitigation/Numerical_Example/BSM_Narrative%20and%20Numerical%20Example%20Updated%20December%201%202016.pdf)>.

<sup>20</sup> The BSM Rules contain two tests to determine eligibility for exemptions based on economics, 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).

1—in evaluations under the BSM Rules for projects that remain in the Class Year through Class Year X-2.

The close alignment of the BSM Rules and Attachment S processes benefits stakeholders by providing “increased transparency and certainty for the benefit of all stakeholders, including potential new entrants evaluating the applicability of the Offer Floor to a project.”<sup>21</sup> The NYISO has explained that “aligning the Attachment H and OATT Attachment S procedures and timetables will provide potential new entrants with the results of the NYISO’s exemption and Offer Floor analyses before they must make the critical decision of whether to accept a Class Year allocation of interconnection project costs (specifically, System Deliverability Upgrade costs).”<sup>22</sup>

## **B. The Petition**

On April 4, 2018, BEC filed the Petition seeking waiver of specified provisions of the OATT and Services Tariff. According to BEC, the requested waivers would permit its BEC II

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<sup>21</sup> See *New York Independent System Operator, Inc.*, Docket No. ER10-3043-000, Proposed Enhancements to In-City Buyer-Side Capacity Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirement at 10 (September 27, 2010).

<sup>22</sup> *Id.* at 10. See also *Id.* at 13 (describing the NYISO’s “overall effort to better coordinate the Attachment H exemption tests with the requirements and timetables established under OATT Attachment S.”) and at 14 (explaining NYISO changes that would “more clearly establish that potential entrants will receive exemption and Offer Floor information that may be critical to their project development decisions in advance of the deadline for deciding whether to accept Project Cost Allocations, or Revised Project Cost Allocations, under OATT Attachment S. It would also ensure that the NYISO would perform the exemption analysis for all proposed Capacity projects in a particular interconnection Class Year at a time calculated to give them the best possible information to use when deciding whether to move forward with a project” and that “[t]he NYISO anticipates that performing the exemption analysis concurrent with the OATT Attachment S cost allocation process will increase the precision of the former since it will be conducted iteratively as projects accept or reject their System Deliverability Upgrade costs in each round of the Attachment S process.”)



120 MW project to “enter the NYISO’s Installed Capacity (‘ICAP’) market in June 2018 or as soon thereafter as possible following the issuance of an order in this proceeding.”<sup>23</sup>

BEC asserts that it is not seeking a waiver “of any substantive requirements applicable to capacity suppliers” but instead “seeks [*sic*] waiver in order to permit BEC to satisfy the substantive requirements of the Tariffs ahead of schedule”<sup>24</sup> It states that its request is so that BEC II “will not have to wait until the NYISO’s Class Year 2017 process has closed, and so [its capacity] is available in New York City for most of the peak Summer months.”<sup>25</sup> The Petition states that “BEC II is uniquely positioned” because it will “soon begin participating in the energy market pursuant to a Limited Operations Study which concluded BEC II can reliably operate in 2018 at full output.”<sup>26</sup> The Petition also asserts that BEC II “fully expects to obtain a Competitive Entry Exemption (‘CEE’) under NYISO’s Buyer-Side Mitigation rules.”<sup>27</sup>

### **C. The Scope and Nature of the Requested Waivers**

BEC requests waivers so that BEC II may obtain CRIS, allowing it to participate in the ICAP market, before the completion of the decision and settlement process for Class Year 2017 (whether or not Class Year 2017 bifurcates). Because the Petition introduces a scenario not

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<sup>23</sup> Petition at 1.

<sup>24</sup> *Id.* The Petition repeatedly characterizes its requested waivers as applying only to “procedural” and not to “substantive” tariff requirements. (*See, e.g.*, Petition at 1, 2, 5, 8, n. 24, 12, 14, 15, 16, 17, 19.) However, as is clear from these Comments, a number of its requested waivers implicate tariff provisions that are substantive in nature.

<sup>25</sup> *See* Petition at 2. BEC presumably refers to completion of the applicable decision period, not the completion of the entire Class Year process. Completion of the applicable decision period, upon which BEC II could receive CRIS, would occur either: (1) in a bifurcated Class Year, at the end of the Bifurcated Decision Period or; (2) in a non-bifurcated Class Year, on the date upon which all remaining Class Year Developers accept their Project Cost Allocations and post Security.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1-2.

anticipated by the BSM Rules, the NYISO understands that granting the requested waivers may result in the need to perform the tests under the BSM Rules in a different manner than they otherwise be would be, including the recently accepted BSM Forecast provisions in the event the Class Year does not bifurcate.<sup>28</sup>

The Petition cites a relatively small number of tariff provisions that it expressly requests be waived. It also states that “OATT Att. S, §§ 25.3.1.2 and 25.7.4 reference the need to satisfy the requirements of Attachment S.” Further, “BEC requests a waiver to the extent required to give effect to the waivers of specific Tariff procedural requirements identified in this request.”<sup>29</sup> The NYISO understands the Petition to be thereby effectively requesting waiver of a number of additional provisions not specifically identified by BEC.<sup>30</sup>

The NYISO’s understanding is that the Petition is not requesting waivers of the Attachment S provisions that establish the ten Business Day period associated with a Notice of Preliminary SDU Studies (if such notice is issued),<sup>31</sup> or of the date that the Class Year decision periods commence, whether for a bifurcated or non-bifurcated Class Year. The NYISO also understands that the Petition is not requesting waivers of the BSM Rule provisions concerning the timing of the NYISO’s issuance of initial BSM Rule determination (including the

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<sup>28</sup> See Letter Order, Docket No. ER17-2096-000 (September 11, 2017). As discussed below, the Petition impacts more tariff provisions and has broader implications than is apparent from the relatively small number of waivers that it expressly requests.

<sup>29</sup> Petition at n. 24.

<sup>30</sup> These additional provisions include Sections: (i) 25.3.1.2; 25.5.10.3, 25.7.4, 25.8.2, 25.8.3, and 25.8.4 of Attachment S to the OATT, (ii) 23.4.5.7.2, 23.4.5.7.3.3.5; 23.4.5.7.9.4.1; 23.4.5.7.9.4.2 and 23.4.5.7.15.4 of Attachment H to the Services Tariff; and (iii) 30.4.6.2.12 and 30.10.4 of Attachment O to the Services Tariff.

<sup>31</sup> See Section 25.5.10.2 of the OATT; *see also* Section 23.4.5.7.9.3.3.2 of the Services Tariff (for implementation of the BSM Rules in relation to the ten business day period established in that OATT provision.

determination of eligibility for CEE) in a bifurcated or non-bifurcated Class Year.<sup>32</sup> The NYISO recognizes that the Petition contains language that could be read to be requesting a determination earlier than the timing specified in the tariff.<sup>33</sup> In the event that the Commission finds that the Petition is requesting waivers of the Class Year or BSM Rule timing provisions (whether the Class Year bifurcates or not), the NYISO would be opposed to that request. Changing the timing provisions would disrupt the NYISO's administration of the Class Year rules, which would negatively affect other members of the Class Year, and risk delaying other Class Year processes including potentially the start of the next Class Year.

At the same time, the NYISO understands that if the Petition's requested waivers are granted, they would not be effectuated unless certain conditions precedent exist. Specifically, the NYISO understands BEC's requested waivers to effectively be contingent on the following conditions precedent and that the first condition—Operating Committee approval—would have to occur first. As discussed in Section IV of this filing, any Commission order granting BEC's requested waivers should clearly address which conditions precedent must exist for the waivers to become effective. The conditions precedent appear to be:

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<sup>32</sup> See Section 23.4.5.7.3.3.3 (specifying that the initial BSM Rule determinations are to be issued after a Class Year bifurcates and prior to the commencement of the Bifurcated Decision Period) and Section 23.4.5.7.3.3.4 for a non-bifurcated Class Year.

<sup>33</sup> See, e.g., Petition at 11 (“[t]his waiver to permit a final exemption determination would apply irrespective of whether Class Year 2017 bifurcates”); see also, *id.* (BEC seeks to receive a CEE “without having to wait until the end of the applicable Class Year (with or without bifurcation) cost allocation process”). Thus, BEC's Petition could be read to request waivers so that as soon as the Operating Committee approves the Class Year Study, BEC would receive its CEE (if was determined to be eligible for it) and CRIS after it posts the requisite Security before any projects that required further SDU studies had an opportunity to decide whether they wanted them or not. It would also occur before the NYISO identified to Developers and other stakeholders whether the Class Year will bifurcate.

- Approval by the NYISO’s stakeholder Operating Committee of the Class Year 2017 Study.<sup>34</sup>
- A NYISO initial determination that BEC II was eligible for a Competitive Entry Exemption under the BSM Rules. The NYISO would provide this determination according to the deadlines specified in the Services Tariff.<sup>35</sup>

After those two conditions have occurred (and only if they occur), the NYISO understands that under the relief requested in the Petition, BEC II would obtain CRIS once the following additional requirements have been satisfied:

- BEC II’s Posting of Security for its upgrades—SUFs and SDUs, if any—identified in the Class Year 2017 Study Reports approved by the Operating Committee, and a determination by the Transmission Owner with which Security is posted that the Security is satisfactory. If the Class Year bifurcates, this requirement would include an obligation to post Security for the highest possible Project Cost Allocation determined in accordance with Section 25.5.10.3 of Attachment S.
- BEC providing a final Certification and Acknowledgment, the NYISO issuing a final CEE determination, the NYISO’s posting of a notice that BEC received a CEE, and the

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<sup>34</sup> The NYISO’s understanding that Operating Committee approval of the Class Year Study 2017 is one of the conditions that must be satisfied is based on the Petition’s statement that “[i]f the Commission approves this waiver request and if the NYISO’s Operating Committee approves the 2017 Class Year Facilities Study” it would be able to participate in the capacity market thereafter. *See* Petition at n. 8. *See also* Petition at 7 (BEC “does not seek a waiver of the requirement that [the Class Year 2017 Facilities Study] be approved by the Operating Committee in order for BEC II to enter the NYISO ICAP Market”). Greater clarity regarding this condition precedent is necessary because the Petition also states that “BEC requests waiver ... so that ... BEC may accept its highest possible Cost Allocation and post any associated security *as early as the date the NYISO provides the allocation to BEC.*” *See* Petition at 8 (emphasis added). Such allocation will be provided to BEC and all other Class Year projects to the Operating Committee’s Transmission Planning Advisory Subcommittee (“TPAS”) prior to presentation to the Operating Committee for its approval of the 2017 Class Year Study. In light of the possibility that the reports and Project Cost Allocations may be revised between the initial TPAS posting and the and ultimate approval by the Operating Committee, it is critical that the waivers, if granted, be contingent upon approval by the Operating Committee.

<sup>35</sup> The NYISO’s understanding is that BEC II’s entry into the market under the waivers would be specifically conditioned on a determination that it is eligible for a CEE. *See, e.g.,* Petition at 12 (“...so that if the NYISO determines on the merits that BEC II is eligible for CEE.”) If BEC II is not eligible for CEE but is determined to be exempt under the “Part A” or “Part B Tests,”<sup>35</sup> the condition precedent would not be satisfied.

MMU's issuance of its report<sup>36</sup> on the NYISO's CEE and Unit Net CONE determinations for BEC II and the posting on the NYISO's website thereof. Under the requested waivers, the MMU would complete this report and the NYISO would complete this posting earlier than the timing specified under the Services Tariff.<sup>37</sup>

Even with the waivers and the satisfaction of the conditions precedent and the receipt of CRIS,<sup>38</sup> BEC II must satisfy other generally applicable requirements in order to actually participate in the capacity market. These include satisfaction of all applicable registration requirements and submitting Dependable Maximum Net Capability test results that are validated and accepted by the NYISO.<sup>39</sup>

#### **D. The Status of Class Year 2017**

The Petition states that the NYISO's "Class Year Interconnection Facilities Study was originally scheduled to be completed and approved by the Operating Committee in December of 2017 . . ." and that because that initial target was not met, BEC II's participation in the capacity market for Summer 2018 is "at risk."<sup>40</sup>

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<sup>36</sup> The NYISO does not know, and this filing does not speak to, what position the MMU might take in a future report on a NYISO determination regarding BEC II's eligibility for a CEE or determination under the Part A Test and the Part B Test, including BEC II's Unit Net CONE thereunder.

<sup>37</sup> As indicated above, the NYISO does not understand the Petition to request waiver of the ten Business Day period in the event a Notice of Preliminary SDU Studies is issued, for purposes of this condition precedent.

<sup>38</sup> Under Section 5.12.1, the generator must have received CRIS before it can be qualified as an Installed Capacity Supplier.

<sup>39</sup> BEC identifies certain deadlines in relation to the ICAP Monthly Auction. However, each month has a later deadline for any entity to participate in the ICAP market for the next following month; *i.e.*, the certification deadline. For example, rather than the May 9-10, 2018 period for the Monthly Auction for the June obligation month that the Petition identifies (*see* Petition at 3 and n. 8), the deadline to be eligible to submit offers for the June obligation month is May 22, 2018. Each month has similar deadlines. *See* the ICAP Event Calendar available at: <[http://icap.nyiso.com/ucap/public/evt\\_calendar\\_display.do](http://icap.nyiso.com/ucap/public/evt_calendar_display.do)>.

<sup>40</sup> Petition at 2.

Class Year 2017 started on March 1, 2017. Twenty-seven projects are being studied in this Class Year. Three existing facilities are in Class Year 2017 only to request Additional CRIS MW.<sup>41</sup> These three Additional CRIS projects and two other Class Year projects are already in service. While NYISO originally anticipated bringing the Class Year to the NYISO's Operating Committee three months ahead of the schedule anticipated by the tariff<sup>42</sup>—*i.e.*, in December 2017—it has instead required additional time to address Developers' comments and to identify the least cost SUFs and SDUs for projects in the largest Class Year in NYISO history.

### **III. 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, and as discussed above in Section II.A, the NYISO is responsible for: (i) processing interconnection requests, conducting Interconnection Studies (including the Class Year Study), and allocating interconnection costs in accordance with Attachments S, X, and Z to the OATT; and (ii) performing analyses and issuing determinations under the BSM Rules established by Attachment H to the Services Tariff. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, consequently, should be permitted to intervene with all the rights of a party.

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<sup>41</sup> Two other facilities in Class Year 2017 are already in-service, but are not requesting CRIS.

<sup>42</sup> Section 25.5.9 of Attachment S provides that the parties engaged in performing study work as part of the Class Year Study will use Reasonable Efforts to complete the basic required evaluations and cost estimates in order that the Class Year Study can be presented to the Operating Committee for approval within twelve months from the Class Year Start Date. For the 2017 Class Year, that would be March 1, 2018.

#### **IV. COMMENTS**

Based on the specific facts and circumstances set forth in the Petition, the NYISO does not take a position as to whether BEC has satisfied the criteria for granting waiver requests.<sup>43</sup>

These comments focus on providing the Commission with additional information concerning the scope, nature, and potential implications of the requested waivers for other projects in the Class Year and other stakeholders, and the NYISO. If the Commission grants the requested waivers, the NYISO asks the Commission to provide certain guidance on the issues identified below. A Commission order granting waivers should also re-emphasize the importance of established timetables and deadlines in the Class Year process and the BSM Rules.

##### **A. The Impact of the Requested Waivers Could Be Different Depending on Whether Class Year 2017 is Bifurcated**

The potential impacts of granting the waiver request could vary depending on whether Class Year 2017 is bifurcated.<sup>44</sup> These differences are discussed in the subsections below.

##### **1. Implications of Granting the Requested Waivers if Class Year 2017 Is Bifurcated**

If Class Year 2017 is bifurcated and if the waiver request is granted, the NYISO should largely be able to follow existing tariff processes without major adjustments. As the NYISO

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<sup>43</sup> The NYISO's silence on the Petition's statements characterizing BEC II or its eligibility for a CEE is not and should not be construed to be agreement with such statements.

<sup>44</sup> The NYISO does not yet know whether Class Year 2017 will bifurcate. Whether it will bifurcate hinges upon the decision(s) made by the applicable projects in the ten Business Day Preliminary SDU Decision Period pursuant to Section 25.5.10.2 of Attachment S. The Preliminary SDU Decision Period will commence as soon as practicable after the Operating Committee approves the Class Year Study, which will likely be the day of or the first Business Day after Operating Committee approval. The NYISO and stakeholders should therefore know whether the Class Year will bifurcate approximately ten Business Days after Operating Committee approval.

understands the Petition, the NYISO would, as provided in the Services Tariff, give BEC II a CEE (if it were determined to be eligible for a CEE) after the Operating Committee approves the Class Year Study and after determining whether the Class Year will bifurcate;<sup>45</sup> *i.e.*, at the same time that it issues the initial determinations for other Examined Facilities that have not requested Additional SDU Studies. Specifically, the tariff states as follows:

In the case of a Bifurcated Class Year, for Examined Facilities that remain a member of the completed Class Year X-1 and Expected CRIS Transferees, the determination issued prior to the commencement of the Bifurcated Decision Period shall be the same as the final determination; therefore, the determinations will reflect all Examined Facilities in the Class Year at the time such first determination is issued.”

Even the initial Unit Net CONE determination, which the NYISO would still have to issue even if BEC II is granted a CEE, would not change because the Project Cost Allocation that the NYISO incorporates into its Unit Net CONE determination is the highest one, pursuant to the BSM Rules.<sup>46</sup>

BEC suggests that the evaluations under the BSM Rules for the other Examined Facilities in Class Year 2017 would be completed as contemplated by the tariff. Specifically, in the case of bifurcation, determinations for projects in Class Year 2017-1 would treat BEC II as if it were continuing to be an Examined Facility. Thus, in the event the waivers are granted and the Class Year bifurcates, evaluations under the BSM Rules for the Class Year projects (including those in Class Year 2017-2) would be performed as specified in the Services Tariff (including the timing provisions).

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<sup>45</sup> See n. 33 *supra*.

<sup>46</sup> See Section 23.4.5.7.3.3.3 of the Services Tariff.



As discussed below, to maintain the transparency provided under the BSM Rules, the NYISO is also requesting that the Commission's guidance provide for the MMU's issuance of its report on the NYISO's BSM Rule determinations for BEC II, which the NYISO would post on its website at the time that it notifies stakeholders and BEC II of the determination, when the CEE determination becomes final (*i.e.*, after the NYISO receives BEC's final Certification and Acknowledgement under the BSM Rules (contingent on BEC II remaining eligible)).<sup>47</sup>

## **2. Implications of Granting the Requested Waivers if Class Year 2017 Is Not Bifurcated**

If Class Year 2017 is not bifurcated, then the requested waivers could have more significant implications and create greater implementation challenges for the NYISO. As discussed below, the NYISO has concerns about the requested waivers in the event the Class Year does not bifurcate. In that event, the waiver raises questions on how the NYISO would proceed with determinations under the BSM Rules for other Examined Facilities in Class Year 2017, which include projects requesting Additional CRIS MW.

Specifically, Section 23.4.5.7.3.2 of the Services Tariff requires that, "[w]hen the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR projects will clear from lowest to highest, using for each Examined Facility the lower of (i) the first year value of its Unit Net CONE, or (ii) the numerical value equal to 75 percent of the Mitigation Net Cone, then inflated in accordance with Section 23.4.5.7 for each of the year two and year three of the Mitigation Study Period."

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<sup>47</sup> This request applies to both a bifurcated and a non-bifurcated Class Year.

Also, Section 23.4.5.7.9.15 governing forecasts under the BSM Rules, which became effective in September 2017,<sup>48</sup> contains specific provisions governing how the NYISO is to treat projects in a given Class Year including other Examined Facilities that are being evaluated at the same time. That treatment is different than it would be for projects that are in a completed (prior) Class Year.

If the Class Year does not bifurcate and the Commission grants the Petition's requested waivers, then the application of these provisions has the potential to impact the outcome of exemption and Offer Floor determinations that the NYISO makes for other Examined Facilities.<sup>49</sup> The alternatives if the Class Year does not bifurcate are, that the NYISO could either treat BEC II as if it remained in a prior completed Class Year, or as if it were effectively a member of Class Year 2017.

The first approach is to apply the rule that the tariff would have applied if the waiver was not granted—*i.e.*, to evaluate the other Examined Facilities in the same Class Year and treat BEC II as it would have had it not received the waivers, a final CEE, and CRIS early. The second approach is to treat BEC II as if it were in a prior completed Class Year. This second approach recognizes that if the waivers are granted, BEC II would have entered the capacity market in

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<sup>48</sup> *New York Indepen. Sys. Operator, Inc.*, Docket No. ER17-2096-000, Delegated Letter Order (September 11, 2017).

<sup>49</sup> The NYISO's posted *Narrative and Numerical Example* describing the BSM Rules (at Sections 6.1 and 6.2) and the MMU's *Assessment of the Buyer-Side Mitigation Exemption Tests for the Class Year 2015 Projects* (at 41-43) both illustrate how this could occur. These documents are available, respectively, at:

<[http://www.nyiso.com/public/webdocs/markets\\_operations/services/market\\_monitoring/ICAP\\_Market\\_Mitigation/Buyer\\_Side\\_Mitigation/Numerical\\_Example/BSM\\_Narrative%20and%20Numerical%20Example%20Updated%20December%201%202016.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/market_monitoring/ICAP_Market_Mitigation/Buyer_Side_Mitigation/Numerical_Example/BSM_Narrative%20and%20Numerical%20Example%20Updated%20December%201%202016.pdf)>, and  
<[http://www.nyiso.com/public/webdocs/markets\\_operations/services/market\\_monitoring/ICAP\\_Market\\_Mitigation/Buyer\\_Side\\_Mitigation/Class%20Year%202015/MMU%20Report%20on%20CY15%20BSM%20Evaluations%20Final%20-%2002022017.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/market_monitoring/ICAP_Market_Mitigation/Buyer_Side_Mitigation/Class%20Year%202015/MMU%20Report%20on%20CY15%20BSM%20Evaluations%20Final%20-%2002022017.pdf)>.

advance of other Class Year 2017 projects. The outcome of exemption and Offer Floor determinations under the BSM Rules for other Examined Facilities in Class Year 2017 could be affected by the approach implemented on this issue.

Although the NYISO could accommodate either treatment,<sup>50</sup> it would be more reasonable to treat BEC II as if it were a member of a completed (prior) Class Year in the event the waiver request is granted and the Class Year does not bifurcate. Such treatment would appropriately reflect the reality that BEC II would have CRIS and, presumably, actually be participating in the capacity market at the time that Class Year determinations for other Examined Facilities become final and those other facilities receive their CRIS. This second approach would thus result in improving (over the first approach) the accuracy of the BSM Rule determination for other Examined Facilities.

In either instance, if the Commission grants the waivers and directs the NYISO to provide CRIS to BEC prior to the completion of the Class Year, it should make clear to the NYISO how it is to administer the BSM Rules and consider BEC in the BSM Forecast and in its application of Section 23.4.5.7.3.2 when making determinations for other Examined Facilities.

**B. If BEC II Receives a CEE it Must Be Required to Provide a CEE Re-Certification as of the Date that the CEE Determination Becomes Final**

If the Commission grants the requested waivers and BEC II receives a CEE, the Commission should require BEC II to submit to the NYISO an executed Certification and Acknowledgment as of the date of its initial BSM determination. Granting the requested waivers could create ambiguity regarding the applicability to BEC II of CEE tariff provisions requiring

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<sup>50</sup> The NYISO's ability to alter its implementation, however, also depends on the proximity of the Commission's issuance of an order in relation to the deadline for the NYISO to issue BSM Rule determinations for other Examined Facilities.

Certification and Acknowledgement. The CEE tariff provisions did not contemplate a proposed Generator (or UDR project) entering the market before a Class Year was complete. Services Tariff Section 23.4.5.7.9.3 states that “[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.” The “Entry Date” is defined for purposes of the CEE rules by Section 23.4.5.7.9.1.1 as the time “the Generator first produces or the UDR project first transmits energy.” This certification requirement contemplated that the certifications would be required at a point in time after the Generator received the exemption.<sup>51</sup> In the case of BEC II, assuming for the sake of argument that BEC II was granted an exemption, that event would occur after the date that the Petition states BEC II would first produce energy.<sup>52</sup> The Commission should require, subject to all other conditions precedent including that BEC is determined to be eligible for a CEE, that BEC re-certify its eligibility for CEE upon receiving CRIS as of the date that the determination is to become final (which under the waiver scenario is expected to be the same date or shortly after the initial determination.)

**C. The Commission Must Provide Implementation Guidance on Six Issues Raised by the Petition**

The NYISO respectfully requests that the Commission address the following points when it acts on the Petition. Absent guidance on these matters, there would be uncertainty for BEC, the interconnecting Transmission Owner, other stakeholders and the NYISO itself, concerning the status and treatment of BEC II under various NYISO tariff provisions.

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<sup>51</sup> The Services Tariff delineates a sequence for a Certification and Acknowledgement to be provided after the exemption is granted, which only occurs under the Services Tariff after the Class Year is completed.

<sup>52</sup> *See, e.g.*, Petition at 16, and n. 7.

First, if the Commission grants the waivers requested in the Petition, the NYISO requests that it confirm that the requested waivers will not apply unless all of the conditions precedent identified above in Section II.C occur. The NYISO, BEC, and other Market Participants would all benefit if the Commission clearly establishes that these conditions precedent must be met.

Second, if the Commission grants the waivers requested in the Petition, the NYISO requests that BEC II be required to remain in Class Year 2017 and be required, at each decision period—the Bifurcated Decision Period, Initial Decision Period, or Subsequent Decision Period, as applicable—to accept its Project Cost Allocation, if any, for SUFs and SDUs, and to post all required Security for same. This requirement is important because it will be a foundational point of data used in BSM Rule determinations for other Examined Facilities. In addition, this requirement helps to limit the disruption to the Class Year process.

This requirement must be clearly established so that there is no ambiguity that BEC must adhere to it and clear notice of the potential consequences of failing to do so. These consequences include but are not limited to a potential event of breach and subsequent default under the Interconnection Agreement, which may then lead to termination of the Interconnection Agreement, termination of BEC II's CRIS rights, and resulting ICAP shortfall and deficiency charges for any capacity sales BEC II might make during a period for which it is later determined to not have had CRIS.<sup>53</sup> This requirement also provides certainty that BEC II will be treated as a Class Year 2017 project in the base case of all future interconnection studies (which include, in their base cases, projects that have accepted their Project Cost Allocation and posted any required Security).

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<sup>53</sup> See Services Tariff Section 5.14.2.1.

Third, if the Commission grants the waivers requested in the Petition, it should determine that if Class Year 2017 bifurcates, BEC II would be treated as a Class Year 2017-1 project under the BSM Rules. If the Class Year does not bifurcate, then the Commission should either endorse the NYISO's preferred treatment or indicate the alternative methodology to be utilized in the BSM Rule determinations for other Examined Facilities in the Class Year, and direct that the NYISO is to implement it. As noted above, under the NYISO's preferred approach, the NYISO would treat BEC II as if it remained in a prior completed Class Year for purposes of the BSM Forecast to be used for performing the Part A Test and Part B Test of other Examined Facilities.

Fourth, if the Commission grants the waivers requested in the Petition, it should state that BEC must submit re-certifications that satisfy the CEE rules through the date that the CEE determination becomes final. It should also confirm that the penalty provisions applicable to a violation of the CEE rules would still apply.

Fifth, if the Commission grants the waivers requested in the Petition, it should state that MMU is to issue its report on the NYISO's CEE and Unit Net CONE determinations for BEC II so that the NYISO can post it on its website upon issuance of the final determination.

Sixth, any Commission order granting the waivers should clearly state that the NYISO is authorized to take all steps that it reasonably deems necessary to give effect to the waivers while also administering its Class Year process and BSM Rules with as few deviations, both with respect to BEC II and other projects, as practicable. Although the NYISO has endeavored to identify as many of the rules potentially implicated by the waiver request as it could in the time available, it may be that other rules would have to be waived, and other implications addressed, if the Petition is granted

**D. The Number and Complexity of the Issues Raised by the Waiver Request Underscore the Need for Any Order Granting Waivers to Emphasize the Importance of Honoring the Requirements, Timetables, and Deadlines Under the Class Year Process and BSM Rules in Other Circumstances**

If the Commission grants the Petition, the NYISO requests that the Commission make clear that its action is based solely on the specific facts and circumstances of BEC's particular request for BEC II and is not precedent for granting future waiver requests. It is generally understood that the scope of Commission waiver orders is limited in this way. The Commission has recognized that waiver of tariff requirements should not be construed as having any impact on the applicability of the same requirements to other projects.<sup>54</sup> The NYISO notes that it has only addressed in these Comments the potential impact of this single Petition with respect to the specific facts regarding BEC II. Additional similar requests or requests with different project circumstances could lead to significant adverse impacts to other parties and NYISO processes. This is particularly true since both the Class Year and BSM processes were designed to evaluate projects largely in parallel.

The NYISO has previously emphasized the need for caution when waiving deadlines under the BSM Rules, even when the NYISO did not oppose waivers on their individual merits, because of the potential for far-ranging disruptions.<sup>55</sup> Such considerations are even more

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<sup>54</sup> 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.").

<sup>55</sup> See, e.g., *Motion to Intervene and Comments of the New York Independent System Operator, Inc.*, Docket No. ER17-2049-000 at 3-4 (July 24, 2017) ("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.") (internal footnotes omitted). See also, *Motion to Intervene and Comments of*

important in this proceeding which involves a request for much more expansive waivers. Broad and substantive waivers of the Class Year rules and BSM Rules should only be allowed when unique circumstances require it.<sup>56</sup> Otherwise, the integrity of the interconnection rules applicable to the Class Year Study processes puts their administration at risk, potentially creating delay for other projects. The Class Year Study process is clearly defined through detailed tariff provisions that were the result of extensive stakeholder input and Commission guidance going back to the inception of the NYISO.<sup>57</sup> Waivers may also put the administration of the BSM Rules, which include consultation with the MMU, in jeopardy. For example, adjustments to the BSM Rules to address other scenarios not specifically contemplated could result in over- or under-mitigation of other projects from the balanced approach that is achieved by the BSM Rules.

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*the New York Independent System Operator, Inc.*, Docket No. ER17-1893-000 at 3-4 (July 12, 2017); *Motion to Intervene and Comments of the New York Indepen. Sys. Operator, Inc.*, Docket No. ER17-1652-000 at 2-3 (June 12, 2017).

<sup>56</sup> As noted above, the NYISO takes no position at this time on the question of whether BEC has demonstrated circumstances that would warrant granting its requested waivers.

<sup>57</sup> See, e.g., *New York Independent System Operator, Inc., Filing of New Attachment S to Open Access Transmission Tariff to Implement Rules to Allocate Cost Responsibility for the Cost of New Interconnection Facilities and Request for Expedited Action* at 4 (August 29, 2001).



## V. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) grant its motion to intervene, (ii) consider these comments in making its decision on the Petition; and (iii) provide the guidance and clarifications requested above, including especially granting the NYISO sufficiently broad authorization to effectuate the Petition's requested waivers with as few disruptions to its established Class Year process and BSM Rules as is practicable.

Respectfully submitted,

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April 18, 2018

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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 18<sup>th</sup> day of April 2018.

/s/ Joy A. Zimmerlin

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