

New York Independent System Operator, Inc.) **Docket No. ER16-1404-__**

As discussed below, the Commission ruled in 2015³ that it would be unjust and unreasonable for the NYISO to apply “buyer-side” capacity market power mitigation measures (the “BSM Rules”)⁴ to certain intermittent renewable resources. The Commission directed the NYISO to create an exemption for such renewable resources. In response, the April 2016 Filing proposed an exemption (the “Renewable Exemption”) that is pending before the Commission. The NYISO anticipates that wind and solar resources that would potentially qualify for the Renewable Exemption will seek to enter the NYISO-administered capacity markets by obtaining

⁴ The BSM Rules are set forth in Attachment H (Section 23) of the Services Tariff.

Capacity Resource Interconnection Service⁵ during the soon-to-commence Class Year 2019.

Until the Commission acts on the April 2016 Filing, however, there will be uncertainty concerning the application of the BSM Rules to such renewable resources. This uncertainty would adversely affect both renewable project developers and other potential entrants.

In addition, if the Commission does not issue an order by the start of Class Year 2019, *i.e.*, August 9, 2019, the NYISO respectfully gives notice that it plans to begin to administer the Renewable Exemption as-filed. Administering the exemption would at first involve preliminary measures necessary for Developers to request and qualify for the Renewable Exemption and for the NYISO to later issue initial Offer Floor and exemption determinations under the BSM Rules (“BSM Determinations”). The NYISO must, however, issue such determinations at a point in the Class Year process which is defined in the Services Tariff.⁶ Commission action on the Renewable Exemption is needed before that point so that the NYISO may reflect any new guidance in its determinations.⁷ As discussed below, if the Commission has not acted by that time the NYISO plans to apply the Renewable Exemption, as filed, when it issues BSM Determinations for Class Year 2019. The NYISO would not take this step lightly but would be

⁵ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Section 2 of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) and Attachment S (Section 25) of the NYISO’s Open-Access Transmission Tariff (“OATT”).

⁶ See, *e.g.*, *Buyer Side Mitigation: Narrative and Numerical Example*, at Section 6.3, available at <https://www.nyiso.com/documents/20142/3026079/BSM-Narrative-and-Numerical-Example-Updated-May-17-2018.pdf> (describing when BSM Determinations must be made for both non-bifurcated and bifurcated Class Years in different Class Year bifurcation scenarios).

⁷ As noted below, the NYISO currently estimates that it will be required to issue BSM Determinations in May 2020 (although this is subject to change.) The NYISO also anticipates that Commission action thirty days in advance of the date that BSM Determinations must be issued would be sufficient for it to account for any new Commission directives, depending on the nature of those directives. The NYISO is currently discussing revisions to its Class Year process with stakeholders that would apply to Class Year 2019 and modify the bifurcation provisions. Nevertheless, the NYISO believes that its current estimate of when BSM Determinations will be issued is useful information for its stakeholders and the Commission.

legally bound to do so in order to comply with the Commission’s 2015 directive that it establish an exemption.⁸

Finally, in the event that the NYISO issues BSM Determinations before the Commission acts, and the Commission subsequently issues an order modifying the proposed Renewable Exemption, the NYISO conditionally requests tariff waivers to allow those BSM Determinations to remain in effect. As discussed below, granting waivers in this scenario would be consistent with Commission precedent and policy.

I. BACKGROUND

In response to a May 2015 complaint by the New York Power Authority, New York Public Service Commission, and New York State Energy Research and Development Authority, the Commission issued the “October 2015 Order.”⁹ That order found that the “NYISO’s Services Tariff is unjust, unreasonable, or unduly discriminatory or preferential, pursuant to section 206 of the FPA, because it applies buyer-side market power mitigation to certain renewable . . . resources that have limited or no incentive and ability to artificially suppress ICAP market prices.”¹⁰ The Commission went on to require that the NYISO submit a compliance filing adopting a new exemption to the BSM Rules applicable to renewable resources that lack the ability and the incentive to suppress capacity prices.

The Commission clearly described what the core features of the exemption should be. In particular, the Commission stated:

⁸ The April 2016 Filing also proposed to establish a Self-Supply Exemption in response to another Commission directive. The NYISO does not currently anticipate that any entity will seek a Self-Supply Exemption in Class Year 2019. Thus, it does not appear that the NYISO will need to implement the Self-Supply Exemption in Class Year 2019.

⁹ See *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 (2015) at P 10 (“October 2015 Order”).

¹⁰ *Id.* at P 10.

Consistent with the Commission’s findings in previous orders, we find that intermittent renewable resources with low capacity factors and high development costs, including many wind and solar resources, narrowly defined, provide their developer with limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices. In addition, in an effort to further limit any risk of artificial price suppression, we find that NYISO should limit the total amount of these renewable resources—in the form of a megawatt cap—that may receive the renewable resources exemption required herein.¹¹

The October 2015 Order also provided specific guidance regarding the types of resources that should be covered by the exemption and required the NYISO to include a megawatt cap on the total amount of renewable resources eligible for an exemption in a given year:

In determining which renewable resources should receive the renewable resources exemption as set forth in this order, NYISO may consider which resources are designated as renewable resources under New York’s Renewable Portfolio Standard. We emphasize, however, that whether a resource qualifies for New York’s Renewable Portfolio Standard is not dispositive of whether it should be exempt from buyer-side market power mitigation under NYISO’s Services Tariff. We agree with NYISO that a renewable resources exemption in NYISO should be limited to renewable resources that are both purely intermittent and that have relatively low capacity factors and high development costs because these resources have limited or no incentive and ability to artificially suppress capacity prices. In addition, the exemption should limit the total amount of such renewable resources—in the form of a megawatt cap—that may receive the exemption, to further limit any risk that these exempted resources will impact NYISO’s ICAP market prices. . . .¹²

In February 2016, the Commission denied rehearing of the October 2015 Order.¹³ The February 2016 Order reiterated the core directive of the earlier order, *i.e.*, that the NYISO must exempt intermittent renewable resources from the BSM Rules:

With regard to the renewable resources exemption, the Commission found that applying NYISO’s buyer-side market power mitigation rules to certain renewable resources up to a megawatt cap is unjust, unreasonable, or unduly discriminatory or preferential because such resources, narrowly defined, have limited or no

¹¹ *Id.* at P 47.

¹² *Id.* at P 51.

¹³ *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 154 FERC ¶ 61,088 (2016) (“February 2016 Order”).

incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices. The Commission explained that intermittent renewable resources with low capacity factors and high development costs, including many wind and solar resources, narrowly defined, provide their developer with limited or no incentive and ability to exercise buyer-side market power.¹⁴

The April 2016 Filing proposed a Renewable Exemption that closely adhered to the principal mandate of the October 2015 and February 2016 Orders. The proposed exemption would be available to Intermittent Power Resources that did not separately request a Competitive Entry Exemption from the BSM Rules.¹⁵ “Intermittent Power Resource” was a previously established tariff term defined as:

A device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. In New York, resources that depend upon wind, solar energy or landfill gas for their fuel have been classified as Intermittent Power Resources. Each Intermittent Power Resource that depends on wind as its fuel shall include all turbines metered at a single scheduling point identifier (PTID).

The April 2016 Filing proposed to grant exemptions automatically to two categories of Intermittent Power Resources – those powered by wind or solar energy – on the ground that the NYISO’s studies demonstrated that they lack the incentive or ability to suppress capacity prices.¹⁶ The April 2016 Filing refers to such automatically exempt resources as “Exempt Renewable Technology.” Currently, only wind and solar facilities meet the proposed definition of Exempt Renewable Technology. Finally, the NYISO proposed to cap the Renewable Exemption at 1,000 MW of installed capacity during each Class Year.

¹⁴ February 2016 Order at P 4.

¹⁵ The Renewable Exemption would also be available to Limited Control Run-of-River Hydro Resources. No resources that fall into this category have yet indicated an intention to request CRIS during Class Year 2019. Accordingly, this filing does not address such resources.

¹⁶ See April 2016 Filing at 10-13, Attachments III, IV, and V.

II. REQUEST FOR COMMISSION ACTION ON THE APRIL 2016 FILING

Commission inaction on the April 2016 Filing has not had any significant practical consequences to date. The April 2016 Filing was submitted near the end of the Class Year 2015 process. As the April 2016 Filing noted, there were “no intermittent and renewable projects in Mitigated Capacity Zones in Class Year 2015” and, as of that time, it was “not possible that there would be a request for a Renewable Exemption in the near future.”¹⁷ There were likewise no intermittent renewable resources in Mitigated Capacity Zones that might have sought to obtain a Renewable Exemption in Class Year 2017, which just concluded.

The NYISO anticipates, however, that there will be potential wind and solar entrants in Class Year 2019. The new Class Year will start on August 9, 2019, as required by Attachment S to the NYISO OATT.¹⁸ Wind and solar entrants would possess the attributes, *i.e.*, intermittency, low capacity factors and the lack of any incentive or ability to suppress capacity market prices, that the Commission has clearly ruled would make it unjust and unreasonable to subject them to mitigation. They would also qualify as “Exempt Renewable Technology” and automatically be eligible for an exemption under the NYISO’s pending Renewable Exemption proposal.

The fact that the April 2016 Filing is pending before the Commission does not mean that the directive of the October 2015 Order has been stayed or is otherwise inapplicable.

Commission precedent is clear that the NYISO is “expected to comply with any directives of the Commission notwithstanding the pendency of action on [a] compliance filing”¹⁹ Without

¹⁷ April 2016 Filing at n. 94.

¹⁸ See NYISO OATT, Attachment S at Section 25.5.9 which specifies that the NYISO must begin a new Class Year process on the first Business Day after thirty calendar days after the completion of the prior Class Year. Class Year 2017 was completed on July 9, 2019. Consequently, the OATT requires Class Year 2019 to begin on August 9, 2020.

¹⁹ See *Dominion Transmission, Inc.*, 118 FERC 61,036 (2007).

Commission action on the April 2016 Filing, the NYISO faces the possibility of having to comply with the October 2015 and February 2016 Orders even though the compliance tariff provisions that would specify how it is to do so have not yet been accepted.

The NYISO therefore respectfully requests that the Commission issue an order on the April 2016 Filing as soon as practicable. Commission action would eliminate uncertainty and avoid controversy regarding the application of the BSM Rules to wind and solar resources in Class Year 2019. It would enable renewable project developers, and other Market Participants, to make better informed entry and exit decisions. A Commission order would also assure the NYISO that it was in full compliance with earlier directives regarding the creation of a Renewable Exemption and any new guidance that the Commission might offer on the April 2016 Filing.

Ideally, the Commission would act on the pending filing before the start of Class Year 2019. If the Commission does not act at least thirty days before the NYISO is required to issue BSM Determinations, then the NYISO would be in a position where it would have to implement the Renewable Exemption as filed without being able to account for any new Commission directives.

III. NOTICE OF IMPLEMENTATION PLAN

In the event that the Commission does not act on the April 2016 Filing by the start of Class Year 2019, *i.e.*, August 9, 2019, the NYISO hereby respectfully gives notice that it plans to begin the administration of its proposed Renewable Exemption, as filed. Initial administration would involve preliminary measures such as announcing and applying the deadline for Renewable Exemption applications, collecting relevant information, and following other processes necessary for the NYISO to later issue binding BSM Determinations. As the Commission has recognized, deadlines for issuing BSM Determinations under the Services

Tariff are closely aligned with the timetable governing the Class Year cost allocation process under Attachment S to the OATT.²⁰ The NYISO currently expects that May 2020 is a reasonable early estimate date for when it will reach the stage where it is required to issue determinations, although this could happen earlier or later depending on the status of the Class Year process.²¹ The NYISO must therefore begin administering the proposed Renewable Exemption provisions from the outset of Class Year 2019 so that it will be prepared to make timely BSM Determinations later on.²²

If the Commission acts on the April 2016 Filing at least thirty days in advance of the NYISO's early estimate date, *i.e.*, May 2020, for issuing BSM Determinations in Class Year 2019 then the NYISO expects that it would be able to implement the Renewable Exemption, including any Commission-directed modifications, on the timetable specified in its tariffs.

²⁰ See, e.g., *Motion to Intervene and Comments of the New York Independent System Operator, Inc.*, Docket No. ER18-1301-000 at 6-7 (April 18, 2018) ("The initial determination for each Examined Facility is issued prior to the commencement of the Class Year Initial Decision Period."); *Bayonne Energy Center, LLC*, 163 FERC ¶ 61,095 at P 31(2018) (acknowledging NYISO concerns altering deadlines under the BSM Rules could disrupt the Class Year process). (See also *Proposed Enhancements to In-City Buyer-Side Capacity Market Power Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirements*, Docket No. ER10-3043-000 (Sept. 27, 2010) (explaining that under the currently effective version of the BSM Rules, "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."); *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 (2010) (conditionally accepting the tariff revisions proposed in that filing).

²¹ See Services Tariff Attachment H at Section 23.4.5.7.3.3.3. See also *Buyer Side Mitigation: Narrative and Numerical Example*, at Section 6.3, available at <https://www.nyiso.com/documents/20142/3026079/BSM-Narrative-and-Numerical-Example-Updated-May-17-2018.pdf>.

²² For example, under the NYISO's proposed Renewable Exemption provisions applications for exemptions must be received by the NYISO no later than the Class Year Start Date. See Proposed Services Tariff Section 23.4.5.7.13.1.1. Applicants must thereafter timely provide information requested by the NYISO. See Proposed Services Tariff Section 23.4.5.7.13.4.1. The NYISO must make exemption eligibility determinations and must also assess whether the 1,000 MW cap on entry in a given Class Year will be implicated. See Proposed Services Tariff Section 23.4.5.7.13.4.2.

If, however, the Commission does not act by then, the NYISO plans to move forward and make BSM Determinations in accordance with the Renewable Exemption provisions that were included in the April 2016 Filing. The October 2015 Order held that it would be unjust and unreasonable for the NYISO to continue to subject intermittent renewable resources to the BSM Rules without making an exemption available. If the NYISO were to subject to an Offer Floor those resources that have the attributes that the October 2015 and February 2016 Orders held justified an exemption to mitigation, then the NYISO would not be complying with those orders. The NYISO would also be acting inconsistently with multiple Commission precedents instructing it to not engage in unnecessary “over-mitigation.”²³

Commission precedent supports the NYISO’s implementation of the proposed Renewable Exemption as-filed in this scenario. In 2016, the Commission held that the Midwest Independent Transmission System Operator, Inc. (“MISO”) had appropriately implemented pending compliance tariff revisions before the Commission acted on them.²⁴ The Commission found that there was “a sound legal basis”²⁵ for the MISO’s action. Section 206(a) of the Federal Power Act (“FPA”) specifies that whenever the Commission finds a public utility rate to be unjust, unreasonable, or unduly discriminatory, it must determine the just and reasonable rate to

²³ See, e.g., *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 158 FERC ¶ 61,137 (2017) at P 34 (“the Commission seeks to ensure that buyer-side market power mitigation rules strike a careful balance between over-mitigating and under-mitigating new capacity resources” because over-mitigation imposes unnecessary barriers to entry contrary to Commission policy.); *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 26 (2013) (upholding PJM buyer-side mitigation rules because they struck the proper balance between over- and under-mitigation.) See also *Centralized Capacity Market Design Elements: Commission Staff Report*, Docket No. AD13-7-000 at 26 (Aug. 23, 2013) (“any market power mitigation construct should be designed to constrain actions that will alter competitive market outcomes, while avoiding over-mitigation that can deter from the formation of accurate price signals for investment in capacity resources”).

²⁴ *Ameren Services Co., Northern Indiana Public Service Co. v. Midwest Independent Transmission System Operator, Inc., et al.*, 155 FERC ¶ 61,073 (2016) (“2016 MISO Order”).

²⁵ *Id.* at P 20.

thereafter be observed and then “fix the same by order.”²⁶ The Commission’s underlying orders had found the existing MISO tariff to be unjust and unreasonable and directed the MISO to make a specific tariff change. This directive was itself sufficient to “fix” a just and reasonable rate for purposes of Section 206(a) of the FPA.²⁷ The revised rate was known through issuance of the underlying Commission order and there was “no uncertainty that could only be removed through acceptance of the compliance filing.”²⁸ Thus, the Commission found that MISO had appropriately implemented its compliance tariff revision before the Commission completed the administrative step of accepting it.

The same Section 206 principles are applicable in this proceeding. The compliance revision at issue in the MISO case was narrower in scope than the NYISO’s proposed Renewable Exemption. At the same time, the core directive of the October 2015 and February 2016 Orders, *i.e.*, that the NYISO must exempt intermittent wind and solar resources, is just as clear as the directive to MISO. In this respect, the October 2015 and February 2016 Orders are as specific in requiring a rate change, and do as much to “fix” a new rate, as the underlying MISO orders. As in the MISO proceedings, there can be no doubt that the Commission has directed a particular outcome, namely, the exemption of intermittent wind and solar resources. The NYISO’s proposed Renewable Exemption would effectuate the Commission’s core directive by making “Exempt Renewable Technology” (*i.e.*, intermittent wind and solar projects) automatically eligible for an exemption. There is thus a “sound legal basis” for the NYISO to implement an exemption for intermittent wind and solar resources if the Commission does not timely act.

²⁶ *Id.* at P 21.

²⁷ *Id.* at PP 21-22.

²⁸ *Id.* at P 22.

The October 2015 and February 2016 Orders do not include a comparably clear directive concerning the level of the annual megawatt cap to be included in an exemption. Nevertheless, if the Commission has not acted by the time that the NYISO must issue BSM Determinations, it would be reasonable for the NYISO to implement its proposed cap. The October 2015 and February 2016 Orders expressly required the NYISO to include a megawatt cap in the Renewable Exemption. The April 2016 Filing explained that the NYISO's proposed 1,000 MW cap was based on analyses demonstrating "that allowing this quantity of MW to be eligible for a Renewable Exemption in a given Class Year is reasonable because it would not be likely to result in the artificial suppression of capacity prices in Mitigated Capacity Zones."²⁹ Although other parties recommended changes to the proposed cap, the NYISO continues to believe that its filed proposal is just, reasonable, and compliant with the Commission's directives. Accordingly, absent a Commission order, implementing the 1,000 MW cap for Class Year 2019 would be the best option.

To be clear, the NYISO would be reluctant to apply its proposed Renewable Exemption in proceeding with BSM Determinations for Class Year 2019 projects before the Commission acts on the April 2016 Filing. The NYISO would not take this step lightly and would only act because failing to do so would appear to violate the October 2015 and February 2016 Orders and result in "over-mitigation." The NYISO's preferred outcome is that the Commission issue an order addressing the Renewable Exemption well in advance of its issuance of BSM Determinations.

The NYISO informed stakeholders of its current implementation plans at the July 8, 2019 joint meeting of its Transmission Planning Advisory Subcommittee and its Installed Capacity

²⁹ See April 2016 Filing at 10, 10-13 and Attachments III, IV, and V.

Working Group. The NYISO also posted a statement on its website on July 9, describing its proposed course of action, including its intention to make this filing.³⁰

IV. CONDITIONAL REQUEST FOR TARIFF WAIVERS

The NYISO conditionally requests tariff waivers to address the possible future scenario in which the Commission has not addressed the April 2016 Filing, the NYISO makes final BSM Determinations based on the Renewable Exemption as filed, and the Commission subsequently issues an order that modifies the April 2016 Filing. The purpose of the conditional request for waivers is to confirm that in this scenario the NYISO would not be required to modify BSM Determinations for Class Year 2019 that were made prior to the issuance of the Commission's order.

The Commission has traditionally granted tariff waivers where: (i) the applicant acted in good faith; (ii) the waiver is of limited scope; (iii) the waiver addresses a concrete problem; and (iv) the waiver does not have undesirable consequences, such as harming third parties.³¹ All four of these requirements are satisfied in this proceeding.

First, the NYISO would be acting in good faith. If the NYISO implements the Renewable Exemption prior to Commission acceptance, it would be doing so to comply with the explicit dictates of the Commission's orders and to avoid what they clearly held would be "over-mitigation." The NYISO would be doing so years after making the April 2016 Filing. It would also be acting after giving the Commission and stakeholders ample notice of its plans in this filing. It therefore could not plausibly be claimed that the NYISO would be acting without

³⁰ See

https://www.nyiso.com/documents/20142/7455526/05_Treatment%20of%20Renewable%20Exemption%20for%20Class%20Year%202019.pdf/f51c1c17-693a-8321-2034-44688738a053.

³¹ See, e.g., *New York Independent System Operator, Inc.*, 146 FERC ¶ 61,061 at P 19 (2014).

regard for the Commission's authority or its stakeholders' interests. Furthermore, by implementing the Renewable Exemption as proposed in the April 2016 Filing, the NYISO would be effectuating tariff provisions that were themselves developed in a good-faith effort to comply with the October 2015 Order.

Second, the requested waivers would be limited in scope. They would be needed only in the scenario described above, which this filing is requesting the Commission to avoid in the first place. They would also apply only one-time, *i.e.*, to BSM Determinations for Class Year 2019. Moreover, granting waivers would avoid numerous deviations from tariff provisions governing the normal application of BSM Rules and Class Year processes that would be necessary if the NYISO were required to undo BSM Determinations (with the extent of those deviations increasing the longer Commission action was delayed.)

Third, the requested waivers would address a concrete problem. Requiring the NYISO to undo BSM Determinations would be very disruptive to entities that make market entry or retirement decisions based on them. By contrast, granting the conditional request would avoid such disruptions. It would also eliminate any possible question regarding the need to re-run market results or pay refunds. Preventing substantial market uncertainty and controversy would clearly address a concrete problem.

Finally, granting the requested waivers would not have undesirable consequences. Waivers would be consistent with the core directives of the October 2015 and February 2016 Orders as well as precedent favoring the preservation of settled market expectations. If the NYISO implements the Renewable Exemption before the Commission acts, it would be effectuating what would by then be a more than four-year old mandate to address over-mitigation and eliminate an unnecessary barrier to entry. Any market consequences resulting from the

NYISO's compliance with this mandate should not be deemed to be "undesirable." Moreover, Commission precedent strongly favors preserving settled market expectations, including those formed with respect to BSM Determinations.³² Overturning BSM Determinations that may be impacted by the implementation of the Renewable Exemption before a Commission order is issued would disrupt the expectations of, and substantially harm, Market Participants that make investment decisions in reliance on them.³³ Such an outcome would be an "undesirable consequence" that would outweigh impacts on parties that might benefit if those BSM Determinations were overturned. The Commission has previously sought to balance equities and allowed waivers that would avoid substantial harms even if doing so could cause comparatively minor harm to certain third party interests.³⁴

³² See, e.g., *Northeast Utilities Service Co.*, 135 FERC ¶ 61,223 (2011) at PP 12-13 (denying waiver in part because it would have required re-running market settlements and changing auction results.) See also *PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,072 at P 34 (2019) (holding that granting waiver would be inappropriate when it would affect an already-commenced auction); *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 158 FERC ¶ 61,137 at P 35 (2017) (noting that the Commission will not allow mitigation determinations to be revisited after a resource has entered the market.) The NYISO believes that it would be especially reasonable for wind and solar projects to rely on BSM Determinations made before the issuance of an order on the April 2016 Filing given that the NYISO is providing months of advance notice of its plans, including its conditional request for waivers, in this filing.

³³ The Commission has held that resources previously subject to mitigation are not eligible for newly-established exemptions. See *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 158 FERC ¶ 61,137 at P 35 (2017) ("The Commission's long-standing policy has been that any exemption granted from NYISO's buyer-side market power mitigation rules only will be applied prospectively to new entrants.") This policy should not be applied to wind and solar entrants in Class Year 2019 that receive BSM Determinations before the Commission acts on the April 2016 Filing because they have not previously been found to be subject to mitigation. The Commission's policy likewise should not be construed as making it unreasonable for wind or solar entrants that have not previously been mitigated to rely on renewable exemptions granted before the Commission acts on the April 2016 Filing.

³⁴ See, e.g., *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,122 at P 47 (2015) (granting waiver of PJM tariff to allow PJM to retain approximately 2,000 MW of capacity it would otherwise be required to release in an auction even though doing so could have cost implications); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078 (2014) (granting waiver of PJM Tariff and Operating Agreement to allow submissions of cost-based offers at prices above the otherwise applicable offer-floor cap even if this could result in temporary cost increases to load); *New York Independent System Operator, Inc.*, 146 FERC ¶ 61,061 at P 20 (2014) ("Finally, although granting waiver may result in increased costs to load and

V. CONCLUSION

In conclusion, the NYISO respectfully requests that the Commission act as soon as practicable, and at least thirty days in advance of when the NYISO must make BSM Determinations for Class Year 2019. In addition, to the extent that the Commission does not act by then but issues an order modifying the proposed Renewable Exemption after the NYISO has implemented it, the Commission should grant the NYISO's conditional request for tariff waivers.

Respectfully submitted,

/s/ David Allen

David Allen

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July 19, 2019

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increased costs to certain market participants if generators incur verifiable actual energy production costs above \$1,000/MWh, we find that it is appropriate to allow generators to recover such costs in this exigent circumstance.”); (*PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041 at P 5; *order on reh’g*, 149 FERC ¶ 61,059 (2014) (allowing waiver of certain make-whole payment Tariff provisions that had the potential to increase costs.)

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 19th day of July 2019.

/s/ Joy A. Zimmerlin

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