

February 7, 2020

By Electronic Delivery

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

**Re: New York Independent System Operator, Inc., Supplement to Filing  
Proposing Enhancements to the Competitive Entry Exemption; Docket No.  
ER20-663-000**

Dear Ms. Bose:

On December 20, 2019, the New York Independent System Operator, Inc. (“NYISO”) submitted, in accordance with Section 205 of the Federal Power Act (“FPA”),<sup>1</sup> three proposed enhancements to the existing “Competitive Entry Exemption” (“CEE”) (the “December 20 Filing”). The CEE is established under the NYISO’s “buyer-side” capacity market power mitigation measures (the “BSM Rules”) in Attachment H to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”). The December 20 Filing was unanimously supported in the NYISO stakeholder process and was uncontested before the Commission.

The NYISO is respectfully submitting this supplement to the December 20 Filing in order to provide additional information on two points. First, Section I of this supplement discusses in greater detail the rationale for the December 20 Filing’s proposal to make Additional Capacity Resource Interconnection Service megawatts (“Additional CRIS MW”)<sup>2</sup> ineligible for a CEE if the associated existing Capacity Resource Interconnection Service megawatts (“CRIS MW”) were originally exempted under the “Part A Test.” Second, Section II expands upon the December 20 Filing’s explanation of why applicants that enter into “Competitive and Non-Discriminatory Hedging Contracts” should continue to be eligible for a CEE.

The NYISO understands that its submission of this supplement will be deemed to be an amendment of the December 20 Filing. As is described in Part III below, the NYISO is submitting a clean version of the Services Tariff revisions that were initially proposed in the December 20 Filing. The NYISO respectfully requests that the Commission issue an order accepting the proposed tariff revisions within the standard notice period under Section 205 which is sixty (60) days after the date that this supplement was submitted; *i.e.*, by April 7, 2020, with an

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff.

effective date of April 8, 2020, *i.e.*, the day immediately following the end of the standard notice period.

**I. Supplemental Information Regarding the NYISO's Proposal that Additional CRIS MW Be Ineligible for a CEE if Associated with CRIS MW that Are Exempt from an Offer Floor Under the Part A Test**

The December 20 Filing recounted that the CEE was established to ensure that “pure merchants” that fund their projects wholly without subsidies would not unnecessarily be subject to mitigation under the BSM Rules. The December 20 Filing proposed to make Additional CRIS MW eligible for the CEE for the first time, provided that they satisfied proposed eligibility criteria. These criteria related back to the mitigation status of the existing CRIS MW associated with the request for Additional CRIS MW.<sup>3</sup> The general rule would be that existing CRIS MW must be exempt from an Offer Floor in order for associated Additional CRIS MW to be eligible for CEE.

Footnote 14 of the December 20 Filing described a proposed exception to the general rule. An Additional CRIS MW project would be ineligible for a CEE when its existing CRIS MW were previously found to be exempt under the Part A Test. The Part A Test is one of two “economic” exemptions available under the BSM Rules. It is designed to exempt new entrants as long as there is a reasonable balance between supply and demand.<sup>4</sup> The December 20 Filing noted that the proposal to make Additional CRIS MW ineligible for a CEE if they are associated with CRIS MW previously exempted under the Part A Test is necessary to prevent gaming.

Specifically, the proposed restriction would prevent developers from strategically segmenting a project so as to first obtain a Part A Test exemption for a small portion of its capacity in one Class Year (since smaller projects are more likely to pass the Part A Test) and then returning in a subsequent Class Year to request a CEE for the remainder of its supposedly “additional” capacity. Footnote 14 of the December 20 Filing presented a simple example of how this might be done. Specifically, the developer of a 500 MW project could potentially present a small portion of its capacity, *e.g.*, 10 MW as if it were a separate 10 MW project. It could then benefit from subsidies nominally in support of its “10 MW project” while still obtaining an exemption under the Part A Test. After using those subsidies to construct and operate the facility, the developer could then seek a CEE for 490 MW of purported “Additional CRIS MW” in the next Class Year that properly should have been evaluated under the Part A Test. The outcome would be that a 500 MW project would circumvent the BSM Rules based on a Part A Test exemption that was only appropriate for a 10 MW unit and that a 500 MW project that benefitted from subsidies would wrongly receive a CEE.

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<sup>3</sup> See December 20 Filing at 4.

<sup>4</sup> The Part A Test currently compares the forecast of capacity prices in the first year of an Examined Facility's operation to the Default Offer Floor, which is 75 percent of the net [cost of new entry (CONE)] of the hypothetical unit modeled in the most recent Demand Curve reset, such that a new entrant is exempted if the price forecast for the first year is higher than the Default Offer Floor.

The NYISO's proposal to make Additional CRIS MW ineligible for a CEE if they are associated with CRIS MW previously exempted under the Part A Test would prevent such outcomes. The proposed restriction would also guard against other, less obvious, attempts to game the interactions between the Part A Test and the CEE rules for Additional CRIS MW. The NYISO is not concerned that comparable stratagems could be employed by developers that originally obtained a CEE or "Part B Test"<sup>5</sup> exemption for their CRIS MW. Consequently, the NYISO's proposed eligibility restriction is limited to Additional CRIS MW associated with CRIS MW that were previously exempted under the Part A Test.

Like the rest of the December 20 Filing, the NYISO's proposed eligibility restriction for Part A Test CRIS MW was discussed during the stakeholder process, enjoyed unanimous stakeholder support, and was endorsed by the independent Market Monitoring Unit ("MMU").

## **II. Supplemental Information Regarding the Justification for Allowing Developers that Enter into Competitively Procured Short-Term Hedging Contracts to Continue to Be Eligible for a CEE**

The December 20 Filing explained that allowing developers to compete for and obtain competitive, short-term hedges that meet the proposed tariff definition of "Competitive and Non-Discriminatory Hedging Contracts" would support legitimate economic development efforts while continuing to guard against the type of price suppression concerns that the NYISO's BSM rules are meant to address.<sup>6</sup> The NYISO explained that LSEs and suppliers in New York often enter into competitive, short-term hedging contracts for energy and capacity. The NYISO's understanding is that this robust secondary market is of particular importance to New York project developers because the NYISO does not administer a multi-year "forward" capacity market.

The December 20 Filing also described the requirements that a contract must meet to qualify as a "Competitive and Non-Discriminatory Hedging Contract." Such contracts must be limited-term arrangements obtained through open, competitive, and non-discriminatory procurement processes. The maximum term of such contracts would be three years. Both new and existing resources would have to be eligible to satisfy the procurement's requirements. The selection process must not give a preference to new resources. In particular, it must not use indirect means to discriminate against existing capacity. The requirements must be fully objective and transparent. Contract awards must be determined based on the lowest offers received from qualified bidders. There must be no restriction on the technology used by resources obtaining the contract. The NYISO would ensure that that procurement process meets these requirements by reviewing the terms of the procurement. The proposal also requires the entity seeking the CEE to obtain from the Non-Qualifying Entry Sponsor issuing the contract, and to submit to the NYISO,

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<sup>5</sup> Under the Part B Test, the NYISO examines the economics of individual entrants. It compares a forecast of capacity prices in the first three years of an Examined Facility's operation to the net CONE of the Examined Facility, so that a new entrant will be exempted "if the price forecast for the three years is higher than the net CONE of the Examined Facility."

<sup>6</sup> See December 20 Filing at 5-7.

an executed certification and acknowledgment form, modeled on the previously accepted form for new Generators and UDR projects. These requirements, along with active oversight by the NYISO and MMU, will ensure that the Competitive and Non-Discriminatory Hedging Contract rules are fully consistent with the purpose and design of the CEE.

This supplement discusses specific examples of hedging contracts that would, and would not, qualify as Competitive and Non-Discriminatory Hedging Contracts under the December 20 Filing's proposal. The NYISO also expands upon how its proposal will help to foster economic development.

Discussions during the stakeholder process that preceded the December 20 Filing appear to have assured stakeholders that allowing certain short term hedges would assist economic development without undermining the BSM Rules. In addition, the MMU, which had raised concerns that an earlier proposal to treat hedges as "allowable contracts" was too vague,<sup>7</sup> endorsed the NYISO's proposal. The NYISO and its stakeholders discussed fact patterns like the one in the following example in detail:

Assume that Load Serving Entity L ("LSE L") initiates a Request for Proposals ("RFP") process to satisfy a portion of its forward obligation to procure Installed Capacity. This would be a relatively common occurrence in LSE L's business model, which includes procuring fifteen percent of its expected capacity requirement in two-year forward hedging contracts. For purposes of this example, LSE L has forecasted its MW ICAP requirement for the 2023 Capability Year to be 2000 MW. It plans to conduct three separate RFPs, each for 100 MW of Installed Capacity hedges, beginning in the 2023 Capability Year.

Assume also that the first RFP put out by LSE L seeks 100 MW of ICAP that is deliverable throughout the 2023 and 2024 Capability Years. This RFP is open for new and existing resources and all technology types provided they are, or can qualify as, an ICAP Supplier pursuant to the Services Tariff. The RFP includes a credit requirement to qualify bidders, but the selection of competing bids is based upon the lowest cost of the capacity over the two capability periods. The second RFP is also for 100 MW of ICAP that is deliverable for the seven consecutive Capability Years beginning May 2023. This RFP is also seeking 100 MW of ICAP available from new or existing offshore wind resources and will be awarded to the least cost capacity bids from qualified offshore wind generators. The third RFP is for 100 MW of Installed Capacity provided by an energy storage facility to be delivered in the 2023 Capability Year.

Finally, assume that three Generators respond to the first RFP for 100 MW deliverable throughout the 2023 and 2024 Capability Years. Generator A owns a 50 year old, 100 MW combustion turbine, which it is proposing to replace in 2025 with a 100 MW battery facility for which it has requested a CEE, and a six year old 400 MW combined cycle generating facility. Generator B is developing a 250 MW offshore wind plant seeking to interconnect to the Mitigated Capacity Zone in 2022 and a separate 40 MW battery generator seeking to interconnect in 2023 with a CEE. Generator C is developing two separate 100 MW battery

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<sup>7</sup> See December 20 Filing at 7.

facilities in the Mitigated Capacity Zone for the 2022 and 2023 Capability Years, respectively and has requested a CEE for both projects. Generators A, B, and C all bid on RFP 1; Generator B bids on RFP 2; and Generators A and C bid on RFP 3. Generator A is the least cost capacity provider with its bid for RFP 1 based upon the going forward costs of its combined cycle facility. Generator A wins the 100 MW ICAP hedge from LSE L for the 2023 and 2024 Capability Years and Generator B wins the seven year ICAP hedge associated with RFP 2 as the sole bidder. Generator C loses the bid under RFP 1, but is awarded the contract for 100 MW of ICAP pursuant to RFP 3.

Under the currently effective BSM Rules, all three Generators A, B, and C seeking to enter into hedging contracts would be ineligible to receive their requested CEEs and would be subject to an Offer Floor determination because they were awarded an ICAP hedging contract from LSE L (a Non-Qualifying Entry Sponsor). This treatment unnecessarily impedes development that is competitive and efficient because it requires Generator A to withdraw from the robust, competitive secondary market for short-term hedges in New York in order to be able to pursue a CEE for the competitive repowering of its fifty year old combustion turbine.

The December 20 Filing's proposal would allow Generator A to receive the CEE for its battery repowering project provided that the NYISO receives the appropriate certifications from Generator A and LSE L. The proposal would allow Generator A to continue to obtain bilateral hedging contracts through a competitive and non-discriminatory process provided that the contracts have a duration of three years or less and are awarded on a least cost basis without reference to resource technology type. Here, Generator A is allowed to participate in this secondary hedging market while also investing its money into upgrading its aging combustion turbine with innovative energy storage technology. This result avoids a needless impediment to economic development without threatening the integrity of the CEE or the BSM Rules.

Generators B and C would both continue to be ineligible for a CEE under the December 20 Filing's proposal because they secured hedging contracts through RFPs that were restricted to a specific set of generation technologies. Generator B would also be ineligible because the capacity hedge is for a period that extends beyond the NYISO's proposed three year duration limit. These outcomes are appropriate because there would be reason to doubt that a "targeted" RFP process was truly open and competitive. Similarly, a seven year hedge term would raise concerns about potential subsidies that do not exist for shorter-term hedges, especially given established way that short-term capacity hedges are typically used in the New York market.

At the same time, the December 20 Filing would still foster economic development with respect to Generators B and C because the consequences to them of losing eligibility for a CEE would be less severe. They would continue to be eligible for an exemption under the Part A and Part B Tests, that might not be available under the current BSM Rules. To the extent that they did not receive a Part A or Part B exemption they would receive an Offer Floor set at the lower of their Unit Net CONE or the Default Offer Floors instead of automatically receiving the Default Offer Floor. The rationale for these rule changes is set forth in Section II.C of the December 20 Filing.

### **III. Documents Submitted**

The NYISO respectfully submits a clean version of the Services Tariff revisions initially proposed in the December 20 Filing as Attachment I to this Supplement. Attachments III and IV to the December 20 Filing, which were included there solely for informational purposes, have been rendered moot by the Commission's December 19, 2019 order in Docket No. ER19-467-000, *et al*,<sup>8</sup> which rejected the reinstatement of the definition of "Category III" of Examined Facilities.

### **IV. Proposed Effective Date**

The NYISO is requesting an amended effective date of April 8, 2020 for its proposed Services Tariff revisions, which is 61 days from the filing of this supplement to the December 20 Filing.

### **V. Service**

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

### **VI. Conclusion**

The NYISO respectfully submits this supplement to the December 20 filing and renews its requests that the Commission accept the proposed Services Tariff revisions as filed.

Respectfully submitted,

/s/ David Allen

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<sup>8</sup> See *New York Independent System Operator, Inc.*, 169 FERC ¶ 61,225 at P 73 (2019).