

April 30, 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., Proposed Enhancements to the “Part A Exemption Test” Under the “Buyer-Side” Capacity Market Power Mitigation Measures, Docket No. ER20-____-000

Dear Ms. Bose:

In accordance with Section 205 of the Federal Power Act (“FPA”),¹ the New York Independent System Operator, Inc. (“NYISO”) hereby submits proposed revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”). The revisions would enhance the “Part A Exemption Test” under the NYISO’s “buyer-side” capacity market power mitigation measures (the “BSM Rules”)² in four significant ways (the “Part A Enhancements”).

The four proposed Part A Enhancements would improve the BSM Rules so that they continue to be just, reasonable, and not unduly discriminatory in light of changing system and market conditions. In particular, they would update the BSM Rules so that they would more accurately account for the way in which the resource mix in New York State is expected to evolve over the next decade and beyond. The expected transition to cleaner energy resources will be driven in substantial part by New York State policies that Section 201 of the FPA authorizes New York State to pursue. The proposed Part A Enhancements are a NYISO-specific approach³ to recognizing the impact of New York State’s policy choices. At the same time, the NYISO’s

¹ 16 U.S.C. §824d (2018).

² The BSM Rules are set forth in Section 23.4.5.7 of the NYISO’s Market Administration and Control Area Services Tariff.

³ The Commission has frequently held that different regions may have different market rules including with respect to capacity market mitigation measures. It has recently re-emphasized that this principle allows the NYISO and PJM to have different capacity market designs, and correspondingly different mitigation structures. *See, e.g., Calpine Corp. v PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) at n. 94 (“On the basis of the record in this proceeding, the December 2019 Order applies the MOPR to renewable and self-supply resources differently than the Commission recently determined in NYISO. *See N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121 (2020). The NYISO order addressed NYISO’s compliance with a 2015 order, which predated the December 2019 Order by over four years. Moreover, the Commission has explained that “regional markets are not required to have the same rules. Our determination about what rules may be just and reasonable for a particular market depends on the relevant facts.” December 2019 Order, 169 FERC ¶ 61,239 at P 204 n. 431.) *See also Id.* at n. 754 (“Specifically, with regard to the NYISO capacity market rules, the Commission has repeatedly noted the differences between the PJM and NYISO capacity markets making different rules appropriate.”)

proposals will follow Commission precedent by ensuring that the BSM Rules continue to safeguard the integrity of the NYISO-administered, Commission-jurisdictional, Installed Capacity market and prevent price suppression.

The first proposed enhancement would be to conduct the Part A Exemption Test prior to the “Part B Exemption Test.” The Part B Exemption Test is currently performed first.⁴

Second, the NYISO would establish two separate Part A Mitigation Study Periods,⁵ which correspond to two consecutive three year periods to be used in the Part A Exemption Test and correspond to two categories of Examined Facilities, “Group 1” and “Group 2.” The revisions will better align the NYISO Part A Exemption Test evaluations with the expected in-service dates of Examined Facilities. Under the currently effective tariff, there is only a single Mitigation Study Period used for both the Part A and Part B Exemption Tests to evaluate all types of Examined Facilities regardless of the facility’s technology type.

Third, the NYISO would evaluate Examined Facilities under the Part A Exemption Test for each Capability Year of the corresponding three year Part A Mitigation Study Period in which the project is grouped. The existing tariff specifies that the Part A Exemption Test is conducted for only the first year of the Mitigation Study Period.

Finally, the NYISO would modify how the Examined Facilities are ordered for evaluation under the Part A Exemption Test. Currently, Examined Facilities are analyzed in sequential cost order, lowest to highest based, on their Unit Net Cost Of New Entry (“CONE”), an estimate of their annual Net CONE, for both the Part A and Part B Exemption Tests. The NYISO would adjust this ranking to place “Public Policy Resources,” (“PPRs”) *i.e.*, resources that are more likely to actually be constructed given New York State laws, regulations, and policies, ahead of non-PPRs in evaluations under the Part A Exemption Test. The proposed change would not create a new exemption under the BSM Rules for PPRs. The change would, however, eliminate an inefficiency with the existing BSM Rules that could encourage investments in non-Public Policy Resources that are not likely to enter the market in the future.

As noted below, the proposed Part A Enhancements were first recommended by, and have the support of, the independent market monitoring unit (“MMU”) for the NYISO. They were approved by a super-majority of NYISO stakeholders through a voice vote, that included support from all stakeholder sectors with only two parties voicing objections and several abstaining.

The NYISO respectfully requests that the Commission accept the proposed Part A Enhancements as just, reasonable, and not unduly discriminatory without imposing any

⁴ The “Part A Exemption Test” and “Part B Exemption Test” are currently described in Section 23.4.5.7.2 of the Services Tariff but they are not defined terms and are not explicitly referred to as the “Part A” or “Part B” tests. The proposed tariff revisions in this filing would make “Part A Exemption Test” and “Part B Exemption Test” defined terms and standardize references to them throughout the BSM Rules.

⁵ Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff.

conditions or requiring any additional proceedings. It also asks that the proposed tariff revisions be made effective at the conclusion of the standard sixty day notice period under Section 205 of the FPA, *i.e.*, on June 30, 2020.

It is important that the Commission issue an order accepting the filing in its entirety in that timeframe. The NYISO is working diligently to complete the Class Year 2019 process on schedule. Completing the Class Year Study is a major priority for the NYISO and many stakeholders. The NYISO has implemented many improvements to its interconnection process, including the Class Year Study, in order to streamline the process and manage the unprecedented increase in the number of proposed projects in the interconnection queue. Making the Part A Enhancements effective in a timely manner will allow the NYISO to make determinations under the BSM Rules (“BSM Determinations”) that best reflect changing circumstances in New York without any disruption or delay to Class Year 2019. Timely Commission action will avoid disrupting the current schedule, which the NYISO expects will require it to make BSM Determinations in August 2020, or creating significant uncertainty. Further, it is also important to complete Class Year 2019 in a timely manner to facilitate developers’ decisions on whether to enter an upcoming Expedited Deliverability Study and to allow the next Class Year Study to begin.

I. COMMUNICATIONS

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***Designated to receive service.**

II. LIST OF DOCUMENTS SUBMITTED

The NYISO submits the following documents with this transmittal letter:

1. A blacklined version of the NYISO Services Tariff revisions proposed in this filing (“Attachment I”);

2. A clean version of the NYISO Services Tariff revisions proposed in this filing (“Attachment II”); and
3. The Affidavit of Shaun Johnson (the “Johnson Affidavit”) (“Attachment III”).⁶

III. BACKGROUND

A. The Exemption Tests and the Mitigation Study Period

The BSM Rules were established in 2007 and 2008. The Part A Exemption Test and Part B Exemption Test have been part of the BSM Rules from their inception.

The Part A Exemption Test currently compares the forecast of capacity prices in the first year of the Mitigation Study Period of an Examined Facility’s operation to the Default Offer Floor, which is 75 percent of the Net CONE of the hypothetical unit modeled in the most recent ICAP 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.⁷ The test therefore does not focus on the economics of an individual entrant. Instead, it allows new entrants to avoid an Offer Floor at times when the market is approaching the minimum required level of capacity needed in a Locality regardless of whether this is due to load growth or the exit of existing resources.⁸

Under the Part B Exemption Test, the NYISO examines the economics of individual entrants.⁹ For each Examined Facility, it compares a forecast of capacity prices in the three year Mitigation Study Period, which is assumed to be 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.”¹⁰

What are now the “Part A” and “Part B” tests were first proposed in October 2007 to address scenarios in which “an investor might expect a new unit to be economical at the time the investor commits resources three years before entering the market.”¹¹ The tests were later

⁶ As is permitted by the Commission’s April 2, *Order Granting Blanket Waiver of In-Person Meeting and Document Notarization Requirements*, 171 FERC ¶ 61,004 (2020), Mr. Johnson’s affidavit is signed but not notarized.

⁷ See Services Tariff Section 23.4.5.7.2.

⁸ See Johnson Affidavit at P 16.

⁹ See New York Independent System Operator, Inc., *Buyer Side Mitigation Narrative and Numerical Example* (May 17, 2018) at 4, available at <<https://www.nyiso.com/documents/20142/3026079/BSM-Narrative-and-Numerical-Example-Updated-May-17-2018.pdf>>.

¹⁰ *Id.*

¹¹ See New York Independent System Operator, Inc., *Compliance Filing of the New York Independent System Operator, Inc. Regarding the New York City ICAP Market Structure, Affidavit of Dr. David B. Patton*, Docket No. EL07-39-000 (October 4, 2007), at P 70.

expanded to “reduce any risk” that the “ex ante” exemption structure “might serve as a barrier to entry for relatively large units.” At the time, the NYISO’s Independent Market Advisor (now the independent MMU) focused on the fact that:

[I]t may be unreasonable to expect that post-entry prices for the first year after a relatively large unit enters will be high enough to cover the levelized entry costs. Given the lumpiness of investment, economic investment in a large unit may result in prices lower than its entry costs in the first year, but higher than its entry costs in later years as demand grows to absorb the new supply.¹²

The independent MMU has subsequently emphasized that the Part A Exemption Test is meant to allow exemptions for resources that address a Locality’s needs¹³ and “provides a mechanism for selling capacity as long as there is a reasonable balance between supply and demand.”¹⁴ It further explained that, “[t]he Part A Test generally allows any resource to receive an exemption as long as its entry would not raise the capacity surplus to more than five to six percent of the capacity requirement.”¹⁵ The Johnson Affidavit includes an example illustrating when it is appropriate for the Part A Exemption Test to exempt entrants.¹⁶

The BSM Rules initially did not specify the order in which the NYISO would conduct analyses under the Part A Exemption Test. The currently effective tariff’s directive that the NYISO will conduct analyses sequentially based on project costs, from lowest to highest, was added in the 2010 BSM Enhancements Filing.¹⁷ The rationale offered for this rule was that including it in the tariff would increase transparency regarding the NYISO’s administration of the BSM Rules.¹⁸ At the time, ordering evaluations from lowest to highest costs was reflective of expected market behaviors, how resources would be ordered in a supply stack, and resulted in efficient, competitive, economic outcomes that benefit consumers. In short, the most economic projects were the most likely to move forward. As discussed below, the NYISO is proposing to

¹² See New York Independent System Operator, Inc., *Reply Comments of the New York Independent System Operator, Inc., Supplemental Affidavit of Dr. David B. Patton*, Docket No. EL07-39-001, (December 12, 2007) at P 24.

¹³ See, e.g., *Assessment of the Buyer-Side Mitigation Exemption Tests for the Class Year 2017 Projects*, Potomac Economics, July 2019, at 5, available at <<https://www.potomaceconomics.com/wp-content/uploads/2019/09/MMU-Report-CY17-BSM-Evaluation-July-2019.pdf>> .

¹⁴ See Proceeding on Motion of the Commission to Consider Resource Adequacy Matters, Before the State of New York Public Service Commission, Case 19-E-0530, *Initial Comments of Potomac Economics Ltd.*, filed November 12, 2019 (“MMU Initial RAM Comments”), at 17.

¹⁵ *Id.*

¹⁶ See Johnson Affidavit at PP 28-34.

¹⁷ New York Independent System Operator, Inc., *Proposed Enhancements to In-City Buyer-Side Capacity Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirement*, Docket No. ER10-3043-000 (September 27, 2010) (“2010 BSM Enhancements Filing”).

¹⁸ *Id.* at 10.

modify the ranking rules to recognize the greater likelihood that PPRs will move forward under current and expected conditions. At the same time, cost-based ranking would be retained as a subsequent step under the Part A Exemption Test, and under the Part B Exemption Test, because relative cost continues to be a useful ranking metric that leads to greater predictability and transparency in BSM Determinations.

The NYISO's current rule specifying a single three year Mitigation Study Period was also introduced in the 2010 BSM Enhancements Filing. Prior to 2010, the NYISO's exemption analysis used price data starting with the Capability Period in which an ICAP Supplier was "reasonably anticipated to offer to supply UCAP" (the "Reasonably Anticipated Entry Date Rule"). The 2010 BSM Enhancements Filing proposed that the exemption analysis instead use ICAP Spot Market Auction prices for future Capability Periods beginning with the Summer Capability Period that commences three years from the start of a proposed facility's Class Year (the "Three-Year Look-Ahead Rule").¹⁹ The NYISO explained that the change would result in greater predictability and transparency and avoid entry date gaming that was possible under the Reasonably Anticipated Entry Date Rule.²⁰ In addition, three years was a reasonable approximation of the how long it would likely take developers to move from making an investment decision to entering the market given the conditions that existed in 2010.²¹ At the time the NYISO did not believe that alternative rules, such as using different start times for different resources, would be likely to yield more accurate determinations under the BSM Rules.²² The Three-Year Look-Ahead Rule is incorporated into the Services Tariff's existing definition of "Mitigation Study Period."

B. The Development of the Proposed Part A Enhancements

The NYISO is conducting a comprehensive review of potential adjustments to the BSM Rules to better reflect changes in resource investment and retirement decisions and, ultimately, the composition of the overall resource mix that are expected to take place in New York State. These changes are expected to be driven, in large part, by New York State laws, regulations, and policies such as the Climate Leadership and Community Protection Act (the "CLCPA")²³ and

¹⁹ *Id.* at 13.

²⁰ See New York Independent System Operator, Inc., *Initial Compliance Filing and Request for Expedited Action*, Docket No. ER10-3043-001 (December 7, 2010), at 2-3.

²¹ *Id.* The choice of a three-year period was largely based upon the timing for the construction and entry of conventional large generation projects such as combined cycle gas turbines.

²² *Id.*

²³ See Climate Leadership and Community Protection Act, S.B. 6599, 2019 Leg., 242nd Sess. (N.Y. 2019) (codified as Ch. 106, L. 2019). The CLCPA requires that seventy percent of energy consumed in New York State be produced by renewable resources by 2030. By 2040 energy consumed in the State must be completely emissions free. Specific plans and timetables for achieving these objectives are still under development. Such plans are expected to be promulgated by New York State agencies over the next several years and implemented in the years that follow. There are already a number of programs and policies at the New York State Public Service Commission and the New York State Energy Research

other New York State regulatory initiatives.²⁴ The NYISO refers to its effort as the “Comprehensive Mitigation Review” (“CMR”).

In an ongoing New York State Public Service Commission resource adequacy proceeding, the MMU suggested that the NYISO consider two possible modifications to the BSM Rules.²⁵ Both were intended to make the Part A Exemption Test better reflect the reality that substantial amounts of clean energy resources are expected to enter the NYISO-administered market in the coming years while protecting the integrity and performance of the Installed Capacity market. Consistent with the design of the Part A Exemption Test, the MMU’s recommendations would continue to allow Part A Exemptions only for projects whose entry would not disrupt the balance between supply and demand and thus would not suppress capacity market prices.

First, the MMU suggested that the NYISO change the order in which projects are evaluated under the Part A Exemption Test to avoid disadvantaging “Public Policy Resources,” *e.g.*, renewables, battery storage, and other zero emission resources.²⁶ The change would allow such resources to be evaluated before conventional resources.²⁷ But under the existing Services Tariff requirement that the NYISO make Part A Exemption Test determinations in an order based solely on project costs, conventional resources may be incentivized to enter the market. The existing BSM Rules could thus signal a need for investment in resources whose development New York State policies are seeking to discourage.²⁸ This could result in the conventional resources and the resources favored by New York State policies both being built to replace exiting capacity, resulting in an overbuilt system.

Second, the MMU proposed to change “the BSM test assumptions regarding the timing of new entry to be consistent with the specific circumstances of the project.” The MMU explained that:

The current BSM process was designed assuming every new entrant would be a gas-fired generator that would take three years to develop. However, this current

& Development Authority that, consistent with the CLCPA, are aimed to encourage the development of energy storage resources, solar resources, and on- and offshore wind resources.

²⁴ In particular, it is expected that there will be significant generation retirements in New York State during the period covered by Class Year 2019 because of the New York State Department of Environmental Conservation’s “Peaker Rule.” *See Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines*, 6 NYCRR Subpart 227-3 (effective January 16, 2020), available at <<https://www.dec.ny.gov/regulations/116131.html>>. It is desirable that the Part A Enhancements be in place in time for the BSM Rules to more accurately reflect these requirements.

²⁵ *See* MMU Initial RAM Comments at 18-20.

²⁶ *Id.* at 20.

²⁷ *Id.*

²⁸ *Id.*

class year includes projects with a wide range of development timeframes, including battery storage resources capable of entering in just a few months as well as HVDC transmission lines and offshore wind projects with much longer development timeframes.²⁹

For example, battery storage resources that are in the current NYISO interconnection process, *i.e.*, Class Year 2019, could realistically enter the market by the start of the 2020 or 2021 Capability Years. But the currently effective NYISO tariff, which embodies the Three-Year Look-Ahead Rule, would require the NYISO to assume that they would not enter until 2022. This would then cause a gap between the project developers perceived economics and those employed by the NYISO in conducting BSM Determinations. This gap erodes predictability and transparency, which were the initial objectives of the evaluation.

IV. THE PROPOSED “PART A” TEST ENHANCEMENTS

A. Legal Overview

The NYISO has concluded that the MMU’s proposed reforms have merit. They would improve the BSM Rules in a way that would better reflect ongoing changes impacting the generation and consumption of electricity in New York State that are expected to accelerate in the years ahead. Accordingly, the NYISO has “fast-tracked” development of the Part A Enhancements that are included in this filing as a first step in its CMR process. The Part A Enhancements are based on the MMU’s proposals with certain adjustments to reflect stakeholder input and the NYISO’s recent submission of its “Renewable Exemption Limit” compliance filing in Docket No. ER16-1404-002.³⁰ The MMU’s proposals were also modified to the extent necessary to make implementation in Class Year 2019 practicable.

The proposed Part A Enhancements are subject to review under Section 205’s “just and reasonable” standard. Under this framework, the NYISO is not required to demonstrate that its proposed tariff revisions are superior to existing tariff rules, or to alternative rules that might be proposed.³¹ It need only show that its proposals are just, reasonable, and not unduly

²⁹ *Id.* at 20-21.

³⁰ The proposed Part A Enhancements were designed to work in tandem with the provisions in the Renewable Exemption Limit compliance filing to ensure that the BSM Rules will preserve competitive market signals. However, the NYISO’s ability to implement the Part A Enhancements is not dependent on the Renewable Exemption Limit rules being in place.

³¹ *See, e.g., Me. Pub. Utils. Comm’n v. FERC*, 520 F.3d 464, 470-71 (D.C. Cir. 2008), *rev’d in part on other grounds sub nom. NRG Power Mktg., LLC v. Me. Pub. Utils. Comm’n*, 558 U.S. 165 (2010) (“there is not a single ‘just and reasonable rate’ but rather a zone of rates that are just and reasonable; a just and reasonable rate is one that falls within that zone.”); *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) (“FERC is not required to choose the best solution, only a reasonable one”); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009) (having found the independent system operator’s proposal just and reasonable, the Commission was not required to assess the justness and reasonableness of an alternative proposal); *ISO New England Inc.*, 153 FERC ¶ 61,223, at P 90 (2015) (it is well established that there can be more than one just and reasonable rate); *PJM*

discriminatory. Nor is the NYISO required to show that its proposed revisions conform to mitigation rules that the Commission has adopted in other regions. The Commission has been very clear that differences between market and system conditions in different regions can justify their having different mitigation rules.³²

B. Conducting the Part A Exemption Test Prior to the Part B Exemption Test and Introducing Separate Mitigation Study Periods

The proposed Part A Enhancement would reverse the NYISO's current practice of conducting the evaluations for the Part B Exemption prior to conducting the Part A Exemption Test. The NYISO proposes now to conduct the evaluation of Examined Facilities using the Part A Exemption Test before it conducts its Part B evaluation. The NYISO also proposes to conduct the Part A Exemption Test after it has determined the Renewable Exemptions that are available to Qualified Renewable Exemption Applicants under the compliance tariff revisions pending in Docket No. ER16-1404-002.³³

Specifically, assuming that the filing in Docket No. ER16-1404-002 is accepted, the NYISO would first grant exemptions to "Qualified Renewable Exemption Applicants," up to the Renewable Exemption Limit and, to the extent necessary, based on the proposed pro-ration rules in that docket.³⁴ The NYISO would then perform the Part A Exemption Test for all remaining capacity that had not qualified for a Renewable Exemption while counting UCAP MW that qualified for an exemption in forecasted supply. The Part B Exemption Test would then be applied for all remaining capacity that had not qualified for a Renewable or Part A Exemption, again while counting all capacity that had qualified for one of those exemptions as part of forecasted supply. As discussed in the Johnson Affidavit, resources that qualify for the Renewable Exemption would also, by definition, be PPRs for purposes of the Part A Exemption Test. Conducting the Renewable Exemption test before the Part A Exemption Test is therefore necessary to ensure that the amount of PPRs separately available for a Renewable Exemption

Interconnection, L.L.C., 147 FERC ¶ 61,103, at P 59 (2014) ("In submitting proposed tariff changes pursuant to a FPA section 205 filing, PJM need only demonstrate that its proposed revisions are just and reasonable, not that its proposal is the most just and reasonable among all possible alternatives."); *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at P 29 (2006) (The just and reasonable standard under the FPA is not so rigid as to limit rates to a "best rate" or "most efficient rate" standard; rather, a range of alternative approaches often may be just and reasonable.), *reh'g denied*, *E. ON U.S. LLC*, 116 FERC ¶ 61,020 (2006).

³² See n. 5, *supra*.

³³ See New York Independent System Operator, Inc., *Compliance Filing and Request for Commission Action No Later Than June 8, 2020*, Docket No. ER16-1404-002 (April 7, 2020).

³⁴ To the extent that the relevant aspects of the Renewable Exemption are not in place by the time that proposed Part A Enhancements go into effect then the Part A Exemption Test would be conducted first.

(and thus expected to enter) is properly accounted for when applying the Part A Exemption Tests for each Locality.³⁵

In addition, Examined Facilities that are part of Expedited Deliverability Studies conducted after the completion of Class Year 2019 would be tested under the Part A Exemption Test before Examined Facilities in a future ongoing Class Year to reflect the “first mover advantage” of resources qualifying for an Expedited Deliverability Study. The Competitive Entry Exemption would be applied on a separate timeline and would be awarded regardless of the results of the Part A or Part B Exemption Tests.

The NYISO has provided stakeholders with a detailed example demonstrating how the various exemption tests would interact. The example also addressed nesting Locality interactions that are relevant to Examined Facilities located inside Load Zone J (*i.e.*, New York City) that are also part of the G-J Locality because Load Zone J is nested within the G-J Locality.³⁶ In short, the NYISO would perform the Part A Exemption Test first for the nested Locality (*i.e.*, Load Zone J) and then for the nesting Locality (*i.e.*, the G-J Locality). This will allow Examined Facilities to receive an exemption under the Part A Exemption Test if the market signal in any Locality where they are located indicates a need for new capacity. As resources in Load Zone J are also nested within the G-J Locality it is imperative to allow them to satisfy any market signal that they are capable of meeting. Otherwise, the BSM rules would be at odds with the actual market mechanics and would effectively only permit units in Zones G-I to meet a market need in the G-J Locality. Exempting units in Load Zone J for a G-J Locality need may put downward pressure on Load Zone J prices, but that is consistent with the construct of nested zones. If the G-J locality reflects a market need within the Locality, then all resources within that Locality must have the ability to enter and address the need.

In addition, the NYISO is proposing to utilize two separate Part A Mitigation Study Periods to evaluate Examined Facilities under the Part A Exemption Test, *i.e.*, Group 1 and Group 2. Each grouping would encompass three consecutive years. Combined these two Part A Mitigation Study Periods would capture a six-year period of time beginning with the upcoming Capability Year following the Class Year Study. For example, for Class Year 2019, the Part A Mitigation Study Period for Group 1 Examined Facilities would begin with the 2020 Capability Year and include the 2021 and 2022 Capability Years. The Group 2 Examined Facilities would be evaluated under the Part A Exemption Test using the second Part A Mitigation Study Period that will include the 2023 through 2025 Capability Years. This change allows BSM Determinations to more closely align with the expected lead time for the Examined Facility to complete its development and come into service.

³⁵ See Johnson Affidavit at P 23.

³⁶ This “supplemental” example was presented at a joint meeting of the NYISO’s ICAP Working Group, Market Issues Working Group and Price Responsive Load Working Group on April 14, 2020, available at <https://www.nyiso.com/documents/20142/11904936/Part%20A%20Exemption%20Test%20Proposal%20Supplemental%20Example.pdf/8e43b735-09f9-532f-f266-d1e36cadfffa>.

The proposed tariff enhancements default all Examined Facilities to be evaluated within “Group 2” unless: (1) it were already in-service; or the NYISO determines that it: (2a) falls within a category of resources with construction timelines shorter than three years; and (2b) that it is reasonable to project that the facility could be in-service prior to the start of the second Winter Capability Period that falls within the first three years of the Part Mitigation Study Period. Resources that could fall under “2a” include, but would not be limited to, small generators sized below 20 MW, solar photovoltaic installations, battery installations, or uprates to existing generators. The NYISO would retain discretion to determine that an Examined Facility that seemed to belong to one of these “fast build” categories should nevertheless be evaluated as part of Group 2. This change explicitly recognizes the “first mover” competitive advantage of fast lead time projects. It allows such projects to be evaluated before the longer lead time projects. It also helps to prevent gaming because it defaults longer lead time resources into the longer lead time Group 2 category unless the project is already in service or the NYISO has determined that it falls within a category of short lead time resources, and it is in fact reasonable to expect the Examined Facility to be built, interconnected and in service prior to the midpoint in the Part A Mitigation Study Period for Group 1 Examined Facilities.

The NYISO’s proposed tariff revisions would also include rules establishing deadlines for placement in Group 1.³⁷ These are necessary for the NYISO to be able to administer the Part A Exemption Test on the timetable prescribed by the Services Tariff.³⁸

In addition, the NYISO is proposing to perform the Part A Exemption Test for each Examined Facility for each Capability Year of an Examined Facility’s Mitigation Study Period and to grant Part A Exemptions beginning with the first year that the Examined Facility passes the test. Under existing rules, the Part A Exemption Test is performed for the first year of the Mitigation Study Period only. That is, the Part A analysis could be performed up to three times for an Examined Facility, once for each year of the relevant Mitigation Study Period. Once an Examined Facility is deemed to qualify for a Part A Exemption it would be included in the forecast for the remaining Part A and Part B determinations as being in service for the Capability Year in which it passed the Part A Exemption Test.³⁹

³⁷ See Section V.B, *infra*.

³⁸ See *Motion Requesting Commission Action on Compliance Filing, Notice of Implementation Plans, and Conditional Request for Tariff Waivers of the New York Independent System Operator, Inc.*, Docket No. ER16-1404-000 (July 19, 2019) (describing connections between the BSM Rules and Class Year rules that dictate the timing of BSM Determinations).

³⁹ The Examined Facility will have an Offer Floor for any Capability Years prior to the Capability Year in which it passed the Part A Exemption Test. For example, if an Examined Facility were granted an exemption under the Part A Exemption Test for the 2025/26 Capability Year, but entered the ICAP market in October 2024, it would be subject to an Offer Floor until the start of the 2025/26 Capability Year. Further, during the Part B Exemption Test the Examined Facility will be deemed in service beginning with the year it passed the Part A Exemption Test, except that it will be taken out of the forecasted units in service only when the Examined Facility itself is being evaluated for a Part B Exemption.

The NYISO is not proposing to adopt additional Mitigation Study Periods for individual resource types at this time. This is partly because some of the complexities associated with developing resource-specific Mitigation Study Periods, which were discussed in proceedings concerning the 2010 BSM Enhancements Filing,⁴⁰ continue to exist today. Creating the two study groups and performing the test for each year of an Examined Facility's Mitigation Study Period will substantially improve the BSM Rules by allowing them to more accurately reflect the variability of the expected in-service dates for different kinds of Examined Facilities. The NYISO intends to continue to explore the possibility of establishing additional Mitigation Study Period variations in the future.

The NYISO respectfully submits that its proposal to adopt two Mitigation Study Period groups, and the related changes described above, are just, reasonable, and not unduly discriminatory. The current application of the Three-Year Look-Ahead Rule to all Examined Facilities was very well-suited to circumstances in 2010, but changing conditions make the adoption of two Mitigation Study Period groups just and reasonable.⁴¹ The NYISO is enhancing the Part A Exemption Test to more accurately account for the likely actual market entry dates of new entrants given that it is increasingly likely to be different than the three-year lead time that is currently being reflected in both the Part A and Part B Exemption Tests. Nothing about this change would allow state-subsidized resources to suppress capacity prices.⁴²

C. Changing the Order of Evaluations Under the Part A Exemption Test

The NYISO is also proposing to enhance the Part A Exemption Test to revise the order in which Examined Facilities will be tested. Specifically, "PPRs," *i.e.*, resource types whose development New York State is trying to encourage, would be evaluated in the Part A Exemption Test process before other types of projects. The sequence of Part A Exemption Tests among PPRs would continue to be, based upon their relative cost – lowest to highest. Similarly, non-PPRs would continue to be evaluated based on costs after all PPRs are evaluated.

This proposal is a just, reasonable, and not unduly discriminatory enhancement. It will not change the core purpose of the Part A Exemption Test which, as noted above, is to identify whether the market has a sufficiently small surplus so that new entry should not be subject to an Offer Floor. The number of exemptions available under this standard may be smaller than the number of Examined Facilities in a given Class Year. It is therefore necessary to establish rules to govern the order in which Examined Facilities will be eligible to receive exemptions (to the extent available).

The Part A Exemption Test ranking of Examined Facilities should reflect the fact that the development and entry of PPRs in the future will be reasonably certain. Given New York State's

⁴⁰ See Section III.A, *supra*.

⁴¹ To be clear, the NYISO believes that the existing Three-Year Look-Ahead Rule continues to be just and reasonable. The NYISO is simply seeking to update it with a modified just and reasonable rule that better reflects existing, and anticipated future, conditions.

⁴² See Johnson Affidavit at P 22.

long-term CLCPA mandates, and the near term impacts of the Peaker Rule and other New York State policies, whether or not an Examined Facility is a PPR is likely to be a better predictor of eventual market entry than its economics relative to other Examined Facilities. In the past, it has been reasonable to assume that the most economic resources would be the first to construct in response to market price signals. The current Part A Exemption Test rules, which rank Examined Facilities on their costs from lowest to highest, reflects this expectation by making the most economic resources the most likely to obtain an exemption. However, it is no longer valid to assume that the most economic resources are the most likely to be built without reference to the type of resource involved. Considering PPRs before other resources, while continuing to rank resources within each category based on their costs, is more reasonable in light of the interplay of economic and policy considerations in New York State (discussed below).

Changing the testing order will ensure that the Part A Exemption Test reflects the impact of New York State's environmental policy choices on the development and entry of new resources. Resources that meet public policy needs are likely to be built and become operational, even if they do not have the lowest Net CONE. The development of such resources will be favored by new laws and policies that govern siting and operation of these resources. They are thus more likely to have firm off-takers and receive favorable financing terms from private lenders. While additional laws and programs are still being created, the State policies that will impact the siting and approval are already having impacts today.

For example, the "Accelerated Renewable Energy Growth and Community Benefit Act" was recently enacted and took effect on April 3, 2020 as part of the state budget.⁴³ The law creates an Office of Renewable Energy Siting in the Department of State ("DOS") to consolidate the environmental review and permitting of "Major Renewable Energy Facilities" in order to accelerate the siting process of these projects from the current SEQR and Article X siting regimes that continue to govern other resource types.⁴⁴ Other State initiatives, such as the Peaker Rule, are already encouraging the exit of non-PPRs. Thus, if the current testing mechanism is not augmented it is possible that exemptions would be granted under Part A Exemption Test to resources that may not be needed. Without the proposed change to the sequence of Part A Exemption Tests, the BSM Rules could grant exemptions to resource types that New York State policy does not favor, and whose construction New York State is unlikely to allow,⁴⁵ and which New York State is not likely to need given legislative mandates regarding the entry of PPRs.

Performing Part A Exemption Tests for PPRs first would not result in price suppression. This is because the purpose of the Part A Exemption Test is to allow resources to obtain an exemption provided that their entry would not increase the surplus of capacity supply over

⁴³ See, e.g., <<https://www.nyserda.ny.gov/About/Newsroom/2020-Announcements/2020-04-03-NEW-YORK-STATE-ANNOUNCES-PASSAGE-OF-ACCELERATED-RENEWABLE-ENERGY-GROWTH-AND-COMMUNITY-BENEFIT-ACT-AS-PART-OF-2020-2021-ENACTED-STATE-BUDGET>>.

⁴⁴ See Johnson Affidavit at P 18.

⁴⁵ *Id.*

demand to an extent that would cause prices to fall below competitive levels. Any exemption provided under Part A, whether for PPRs or other resources, will continue to be limited to scenarios in which entry, regardless of resource type, meets a Locality's minimum MW need so that prices do not fall below competitive levels. This limit on the scope of exemptions available under the Part A Exemption Test is currently embodied in the Services Tariff and would not be altered by the NYISO's proposal.

The NYISO would define a "Public Policy Resource" as Intermittent Power Resources that are solely wind or solar,⁴⁶ energy storage resources, and other Examined Facilities that the NYISO determines would be zero-emitting resources. Intermittent renewables and energy storage resources are already expressly favored by New York State policy. Similarly, other types of zero-emitting resources that exist now or that may exist in the future, may be supported by future New York State programs that might emerge under the auspices of the CLCPA in the years ahead. In addition, a number of conventional resources are expected to exit the market during Class Year 2019 because of the Peaker Rule and other considerations. Exemptions under the Part A Exemption Test are thus likely going to be available during Class Year 2019. Because resources that fall under the definition of PPRs are the kinds of facilities that are most likely to enter the market in New York in the coming years it is reasonable to consider them first under the Part A Exemption Test.

Under the NYISO's proposal, PPRs that are placed in the Part A Group 1 Examined Facilities category are evaluated using the Part A Mitigation Study Period Years 1 through 3 would be evaluated before non-PPRs in that group and all resources in this Group 1 category would be evaluated for a Part A Exemption prior to the NYISO moving to evaluate the Part A Group 2 Examined Facilities for a Part A Exemption. The PPRs in this Group 2 would likewise be evaluated before other non-PPRs in the Part A Group 2 Examined Facilities. Part A Exemptions Tests would be completed for all eligible Examined Facilities in a given year within the Part A Mitigation Study Period before testing begins on the subsequent year. This change to the ordering of the Part A Exemption Tests better aligns the NYISO's evaluation with the expected entry date for the Examined Facility and provides an opportunity for short lead time projects to be evaluated using a Capability Year that reflects their expected market entry conditions.

The proposed enhancements to the Part A Exemption Test would not prevent non-PPRs from receiving an exemption. Unsubsidized resources would continue to be able to obtain a Competitive Entry Exemption under the BSM Rules, which does not depend on the order of the Part A Exemption Test evaluation, regardless of resource type. All Examined Facilities would also continue to be analyzed under the Part B Exemption Test based on their individual economics. Examined Facilities that are relatively low cost will continue to have a better chance of receiving a Part A Exemption, relative to other projects in their group (*i.e.*, Part A Group 1 or

⁴⁶ These are the same types of resources that currently fall under the definition of "Exempt Renewable Technology" under Section 23.2 of the Services Tariff. That definition was accepted as part of the NYISO's Renewable Exemption in *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 (2020).

Part A Group 2 Examined Facilities). Therefore, the proposed enhancement to the Part A Exemption Test order will not impede private economic investment in the NYISO-administered Installed Capacity markets.

The proposed Part A Enhancements are consistent with recent Commission precedent reaffirming that ISOs/RTOs may have capacity market mitigation rules that address expected resource entry and exit patterns.⁴⁷ The enhancements are also consistent with Commission precedent allowing different regions to adopt different market power rules and structures that reflect other regional conditions.⁴⁸ This Commission precedent implies that methodologies to address current or expected conditions within the NYISO, as a single state entity, do not always raise exactly the same issues as those found in multi-state markets.⁴⁹ The NYISO's proposed change to the sequence of Part A Exemption Tests is consistent with these precedents because they will not allow capacity market price suppression.

V. DESCRIPTION OF PROPOSED COMPLIANCE TARIFF REVISIONS

A. Proposed New Definitions – Section 23.2

Section 23.2 of the Services Tariff includes the definitions that are used in the BSM Rules and other capacity market-related mitigation provisions. The proposed changes to the Part A Exemption Test include a series of additions and modifications to those definitions. The section was also modified to correct alphabetization errors in the order of the definitions and to make other ministerial edits and clarifications. A number of these ministerial corrections referenced in the preceding sentence were not identified until after the Management Committee approved the proposed Part A Enhancements. However, the NYISO notified the Management

⁴⁷ An April 16, 2020 rehearing order addressing PJM reaffirmed a 2018 order accepting a section 205 filing by ISO New England, Inc.'s ("ISO-NE") as a just and reasonable means to both (1) ensure a competitive capacity market that appropriately incentivizes entry and exit decisions; and (2) provide an mechanism for the entry of state-supported resources that does not inhibit the competitive capacity market." See *Calpine Corp. v PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) at P 337 and n.720; citing *ISO New England, Inc.*, 162 FERC ¶ 61,205 (2018) at PP 20, 25.

⁴⁸ See n. 5, *supra*.

⁴⁹ See, e.g., *Calpine Corp., et. al.*, 169 FERC ¶ 61,329 (2019) at n. 23, citing *PJM Interconnection, L.L.C., et. al.*, 137 FERC ¶ 61,145 (2011) at P 3 ("Our intent is not to pass judgment on state and local policies and objectives with regard to the development of new capacity resources, or unreasonably interfere with those objectives. We are forced to act, however, when subsidized entry supported by one state's or locality's policies has the effect of disrupting the competitive price signals that PJM's [capacity auction] is designed to produce, and that PJM as a whole, including other states, rely on to attract sufficient capacity."), quoted with approval in *NJBPU*, 744 F.3d at 101, quoted with approval in *Hughes*, 136 S. Ct. at 1296.) See also *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 at P 67 (2018) ("PJM's Capacity Repricing proposal also represents an unjust and unreasonable cost shift to loads who should not be required to underwrite, through capacity payments, the generation preferences that other regulatory jurisdictions have elected to impose on their own constituents.")

Committee's members that it intended to make these ministerial corrections and there were no objections raised.⁵⁰

As an initial matter, the NYISO would make "Annual Transmission Baseline Assessment" a defined term in Section 23.2. This assessment is conducted under, and is described in, Attachment S to the NYISO's Open Access Transmission Tariff, which governs the Class Year interconnection process. The NYISO is adding the definition to the Services Tariff because the NYISO is proposing to post which Examined Facilities comprise the Part A Group 1 Examined Facilities and Part A Group 2 Examined Facilities 120 days after this assessment is finalized for subsequent Class Year Studies. The NYISO also proposes to add a new definition of the term "Estimated Initial Decision Period." This definition would read: "Beginning with Class Year 2019, subsequent Class Year Studies, Additional SDU Studies, and Expedited Deliverability Studies that are commenced after July 1, 2020, the ISO will establish an "Estimated Initial Decision Period" to be twelve months from the Class Year Study Start Date and three months from the Expedited Deliverability Study Start Date for the purpose of establishing the starting Capability Years for the Part A Mitigation Study Period Years 1 through 3 and Part A Mitigation Study Period Years 4 through 6."

The NYISO would add a series of other definitions to implement the Part A Exemption Test revisions described in Section IV. "Part A Exemption" would be formally defined for the first time⁵¹ to mean "an exemption awarded to an Examined Facility (i) pursuant to the Part A Exemption Test conducted by the ISO prior to Class Year 2019 as described in either Section 23.4.5.7.2(a) of the Services Tariff or (ii) pursuant to the Part A Exemption Test described in Section 23.4.5.7.3.1 of the Services Tariff which shall be conducted by the ISO beginning with Class Year 2019, and in all subsequent Class Year Studies, Additional SDU Studies, and Expedited Deliverability Studies that are commenced after July 1, 2020." The NYISO would also formally define the "Part B Exemption Test" for the first time as "the test conducted by the ISO in accordance with 23.4.5.7.2 (b) and ISO Procedures for an Examined Facility in any Class Year Study, Additional SDU Study, or Expedited Deliverability Study."

The "Part A Exemption Test" definition would specify that, "(i) for any Class Year Study that was conducted prior to Class Year 2019, the test conducted by the ISO to determine if an Examined Facility would be exempt from an Offer Floor under Section 23.4.5.7.2 (a) of the

⁵⁰ These miscellaneous corrections included: (i) adding quotations to the "Exceptional Circumstances" definition to conform to the style of other definitions; (ii) changing two references to "NYISO" to "ISO" to maintain consistency throughout the tariff; (iii) re-alphabetizing "Incremental Regulatory Retirement" to appear before "Indicative Mitigation Net CONE;" (iv) re-alphabetizing "Mitigation Study Period" after "Mitigated UCAP" and "Mitigation Net CONE;" (v) adding a reference to "Net Cost of New Entry" to the Net CONE definition for clarity, (vi) re-alphabetizing "Non-Qualifying Entry Sponsors" to appear before "Offer Floor;" (vii) re-alphabetizing Responsible Market Party" to appear after "Qualified Renewable Exemption Applicant", "Renewable Exemption Applicant", "Renewable Exemption Bank", and "Renewable Exemption Limit," and (viii) re-alphabetizing "Unforced Capacity Reserve Margin" to appear before "Unit Net CONE"

⁵¹ See n. 3, *supra*.

Services Tariff; or (ii) for Class Year 2019 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after July 1, 2020, the test conducted by the ISO to determine if an Examined Facility shall be exempt from an Offer Floor in accordance with Section 23.4.5.7.3.1 of the Services Tariff.”

The new definition “Part A Group 1 Examined Facilities” would be effective starting with Class Year 2019 and for any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after July 1, 2020. The definition would encompass “the set of Examined Facilities being evaluated for the Part A Exemption Test described in Section 23.4.5.7.3.1 using the Part A Mitigation Study Period Years 1 through 3 as determined by the ISO pursuant to the criteria set forth in Section 23.4.5.7.3.1.3 of the Services Tariff.”

Similarly, the new definition for “Part A Group 2 Examined Facilities” would also apply only to Class Year 2019 and any subsequent Class Year Study, Additional SDU Study, and Expedited Deliverability Study that starts after July 1, 2020. It would cover “the set of Examined Facilities being evaluated for the Part A Exemption Test described in Section 23.4.5.7.3.1 using the Part A Mitigation Study Period Years 4 through 6 as determined by the ISO pursuant to the criteria set forth in Section 23.4.5.7.3.1.3 of the Services Tariff.” The rationale for establishing separate Group 1 and Group 2 categories for Examined Facilities is discussed above in Section IV.

“Part A Mitigation Study Period Years 1 through 3” would mean “the evaluation period applied to Part A Group 1 Examined Facilities” and is “composed of the three consecutive Capability Years starting with the Capability Year following the Capability Year in which the Estimated Initial Decision Period for the then current Class Year Study or Expedited Deliverability Study falls.” “Part A Mitigation Study Period Years 4 through 6” would be “the evaluation period applied to Part A Group 2 Examined Facilities” and is “composed of the three consecutive Capability Years starting with the fourth Capability Year following the Capability Year in which the Estimated Initial Decision Period for the then current Class Year Study or Expedited Deliverability Study falls.” Both terms apply only to Class Year 2019 and any subsequent Class Year Study, Additional SDU Study, and any Expedited Deliverability Study that starts after July 1, 2020. Again, the rationale for establishing separate Mitigation Study Periods for the first time is set forth above in Section IV.

Finally, as discussed above in Section IV the NYISO proposes to add to Section 23.2 the term “Public Policy Resource,” which would be defined as “an Examined Facility that is an Energy Storage Resource, or an Intermittent Power Resource solely powered by wind or solar energy, or that is determined by the ISO to be a zero-emitting resource.” The definition establishes an *ex ante* process for resources to request, and the NYISO to determine (in consultation with the independent MMU), whether an Examined Facility is a zero-emitting facility before it enters into a Class Year Study or Expedited Deliverability Study. It also sets deadlines for the NYISO to post such determinations and the identity of PPRs.

B. Proposed Revisions to Section 23.4.5.7, *et. seq.*

The proposed revisions to the Part A Exemption Test are reflected primarily in Section 23.4.5.7, *et. seq.* of the Services Tariff.

Section 23.4.5.7.2 would include several amendments reflecting the changes to the Part A Exemption Test that are also described in proposed amendments to Section 23.4.5.7.3 (which is discussed below). The Part A Exemption Test applicable to Installed Capacity Suppliers for Offer Floor determinations prior to Class Year 2019 is set forth unchanged in Section 23.4.5.7.2(a). Proposed new language would establish that the Part A Exemption Test applicable to entrants in Class Year 2019 and subsequent studies is set forth in new Section 23.4.5.7.3.1. The NYISO is also proposing to add new cross-references to other exemption provisions under the BSM Rules.

Section 23.4.5.7.2 would also be amended to clarify that Examined Facilities that pass both the Section 23.4.5.7.3.1 version of the Part A Exemption Test and the Part B Exemption Test “will be awarded a Part B Exemption” This is appropriate because entrants exempted under Part B are being excused from an Offer Floor based on their individual economics, regardless of whether their entry is needed to address a Locality’s minimum MW requirement. At the same time, Section 23.4.5.7.2 would also be revised to be clear that “for the sole purposes of evaluating other Examined Facilities under the Part A Exemption Test and Part B Exemption Test, the capacity associated with the Examined Facility will continue to be treated as having received a Part A Exemption in order to ensure that another Examined Facility will not receive a Part A Exemption for the capacity of the Examined Facility that was awarded the Part B Exemption after having passed both the Part A and Part B Exemption Tests.”

The NYISO is proposing to add an entirely new Section 23.4.5.7.3.1, including new subsections, which introduces the enhanced Part A Exemption Test itself. The rationale for Section 23.4.5.7.3.1’s various provisions is provided in Section IV above and in the Johnson Affidavit.

As noted above, Section 23.4.5.7.3.1 would apply to any Examined Facility participating in Class Year 2019, and any subsequent Class Year Study, Additional SDU Study, or Expedited Deliverability Study commenced after July 1, 2020. It would provide that, for such Examined Facilities, the NYISO will first determine whether they qualify for the Renewable Exemption under Section 23.4.5.7.2(d) before conducting the Part A Exemption Test. Section 23.4.5.7.3.1 would provide further that the NYISO will perform the Part A Exemption Test before determining whether an Examined Facility is exempt under the Part B Exemption Test (in Section 23.4.5.7.2(b)), the Competitive Entry Exemption (in Section 23.4.5.7.2(c)), or the Self Supply Exemption (Section 23.4.5.7.2(e)).⁵² Section 23.4.5.7.3.1 also provides that an Examined Facility that passes both the Part A Exemption Test and the Part B Exemption Test will be awarded a Part B Exemption, but that “for the sole purposes of evaluating other

⁵² The NYISO’s proposed Self-Supply Exemption has been conditionally accepted by the Commission but will not be implemented for Class Year 2019. The NYISO is developing a required compliance filing addressing the exemption.

Examined Facilities under the Part A Exemption Test and Part B Exemption Test, the capacity associated with the Examined Facility will continue to be treated as having received a Part A Exemption in order to ensure that another Examined Facility will not receive a Part A Exemption for the capacity of the Examined Facility that was awarded the Part B Exemption after having passed both the Part A and Part B Exemption Tests.”

Section 23.4.5.7.3.1.1 would set forth the process for dividing Examined Facilities into two groups, and for performing the analysis for those groups. Specifically, the NYISO is to “begin the Part A Exemption Test by dividing the Examined Facilities into Part A Group 1 Examined Facilities and Part A Group 2 Examined Facilities based upon the factors listed . . . in Section 23.4.5.7.3.1.3 of this Services Tariff and on the ISO’s projection of the time frame when each Examined Facility will come into service.” The NYISO would be required to post a list of each group on its website in accordance with Section 23.4.5.7.3.1.4. The NYISO would be required further to evaluate all PPRs in each group before all other resources in the group, and then to rank each non-PPR in a group based on its specific Net Cost of New Entry (from low to high). Section 23.4.5.7.3.1.1 concludes by providing that each “of the Examined Facilities in the Part A Group 1 Examined Facilities will be evaluated for the Part A Exemption Test using the Part A Mitigation Study Period Years 1 through 3” and that when the evaluation of the Part A Group 1 Examined Facilities is completed, “each of the Examined Facilities in the Part A Group 2 Examined Facilities will then be evaluated for the Part A Exemption Test using the Part A Mitigation Study Period Years 4 through 6.”

Section 23.4.5.7.3.1.2 describes the application of the new Part A Exemption Test. It provides that, for each Part A Group 1 Examined Facility, the NYISO will determine, for “each Capability Year in a Part A Mitigation Study Period Years 1 through 3 . . . whether . . . the average ICAP Spot Market Auction price. . . is higher than 75 percent of the Mitigation Net CONE that would be applicable to the Examined Facility during that same Capability Year.” If an Examined Facility satisfies this test, then it “will qualify for a Part A Exemption for that Capability Year and any subsequent Capability Years.” At the same time, that Examined Facility “will be subject to an Offer Floor for any prior Capability Years in which the threshold was not met unless it otherwise qualifies for an exemption provided in 23.4.5.7.2 (b), (c), (d), (e) [*i.e.*, the Part B Exemption Test, the Renewable Exemption, the Competitive Entry Exemption, or the Self Supply Exemption], or as Cleared UCAP.” Section 23.4.5.7.3.2 provides further that the “Part A Exemption Test will be performed for each Examined Facility sequentially by rank” and that for each Examined Facility located in the New York City Locality, “the ISO will conduct the Part A Exemption Test for the New York City Locality prior to its evaluation for the G-J Locality.”⁵³

Under Section 23.4.5.7.3.1.2, once this process is completed for “all three Capability Years in the Part A Mitigation Study Period Years 1 through 3,” it is “then conducted for the Part A Group 2 Examined Facilities for each Capability Year in the Part A Mitigation Study Period Years 4 through 6.” Specifically, for each Examined Facility, the NYISO “will determine if . . . the average ICAP Spot Market Auction price for each Capability Year in the Part A Mitigation

⁵³ The rationale for this approach to “nested” Localities is discussed above in Section IV and in the Johnson Affidavit at PP 20-22.

Study Period Years 4 through 6 is higher than 75 percent of the Mitigation Net CONE that would be applicable to the Examined Facility during that same Capability Year.” If this “threshold is met, the Examined Facility will qualify for a Part A Exemption for that Capability Year and any subsequent Capability Years” but not for any prior Capability Year unless the Examined Facility otherwise qualifies for a Part B Exemption, or for the Renewable Exemption, Competitive Entry Exemption, or Self Supply Exemption. As with the Part A Group 1 Examined Facilities, for any Examined Facility in the Part A Group 2 Examined Facilities located in the New York City Locality, “the ISO will conduct the Part A Exemption Test for the New York City Locality prior to its evaluation for the G-J Locality.”

Section 23.4.5.7.3.1.3 governs the division of Examined Facilities into Part A Group 1 Examined Facilities and Part A Group 2 Examined Facilities. It would establish that an “Examined Facility will be in Part A Group 2 Examined Facilities unless: (i) it is already in-service; or (ii) the ISO has determined it (a) falls within a category of resources with a construction timeline of less than three years, including but not limited to small generators sized at or below 20 MW, solar photovoltaic installations, battery installations or uprates to existing generators and (b) is reasonable to project the facility could be in-service prior to the start of the second Winter Capability Period that falls within the Part A Mitigation Study Period Years 1 through 3.” The “Examined Facilities that meet either (i) or (ii) . . . will be in Part A Group 1 Examined Facilities.”

Section 23.4.5.7.3.1.4, in turn, governs the timing of the grouping determinations. It provides that the NYISO “will post which Examined Facilities comprise the Part A Group 1 Examined Facilities and Part A Group 2 Examined Facilities [30 days after the effective date of this filing] for Class Year 2019; 120 days after the Annual Transmission Baseline Assessment lock down of any subsequent Class Year Study; and 30 days after the start of any applicable Expedited Deliverability Studies.” These provisions are necessary to “lockdown” grouping determinations so that the NYISO will have enough time to make BSM Determinations on the required tariff schedule.

Section 23.4.5.7.13 establishes the Renewable Exemption under the BSM Rules. This filing is not proposing to make any substantive changes to the Renewable Exemption provisions that have been accepted, or that are currently pending before the Commission, in Docket No. ER16-1404. Instead, the NYISO is only proposing to add new cross-references in Section 23.4.5.7.13.4.2 where needed to refer to relevant new provisions that the NYISO is proposing to add to Section 23.4.5.7.3.1.

Section 23.4.5.7.15 sets forth the NYISO’s rules governing the forecasts used in BSM Determinations (the “BSM Forecasts”). Existing Section 23.4.5.7.15.5 defines “Additional Units” for purposes of the BSM Forecasts. The NYISO is proposing to add a new 23.4.5.7.15.5.2 to specify that the BSM Forecasts will not “double-count” previously granted exemptions. This is an important clarification that will avoid uncertainty and ensure that the proposed Part A Exemption Test continues to function as intended and does not allow entry that would suppress ICAP market prices. The new language would require that the NYISO, “in consultation with the Market Monitoring Unit, shall include for each set of decision round determinations: (i) all Examined Facilities that the ISO has previously exempted from an Offer

Floor under Section 23.4.5.7.13 [*i.e.*, the Renewable Exemption] or as a Public Policy Resource under Section 23.4.5.7.3.1 in a Class Year Study, or Additional SDU Study or Expedited Deliverability Study in the first Capability Year in which the Examined Facility was granted such exemption, provided, however, for any exemption granted to an Examined Facility under Section 23.4.5.7.13 or as a Public Policy Resource under Section 23.4.5.7.3.1 prior to the most recently completed Class Year Study, the ISO shall exclude the Examined Facility if it has determined it is reasonable to project the Examined Facility will not enter the market, and (ii) all Examined Facilities that the ISO determines will receive a Renewable Exemption or a Part A Exemption in the currently ongoing Class Year Study, Additional SDU Study or Expedited Deliverability Study until and unless an Examined Facility rejects its cost allocation or otherwise drops out of such Class Year Study, Additional SDU Study or Expedited Deliverability Study.”

In the same vein, new Section 23.4.5.7.15.5.2 would provide further that any “Examined Facility that was granted an exemption by the ISO in a previously completed Class Year Study, Additional SDU Study, or Expedited Deliverability Study pursuant to Section 23.4.5.7.2(a) if issued prior to the start of Class Year 2019, Section 23.4.5.7.2(b), Section 23.4.5.7.2(c) or Section 23.4.5.7.2(e) shall also be included in the BSM Forecast for each set of decision round determinations for such Class Year Study, Additional SDU Study or Expedited Deliverability Study if the ISO has determined that 5% or more of its respective total project’s costs have been spent.”

VI. STAKEHOLDER AND INDEPENDENT MARKET MONITORING UNIT REVIEW

The NYISO held multiple meetings with stakeholders to discuss the proposed Part A Enhancements and the tariff provisions included in this filing. The NYISO carefully considered stakeholder input, including multiple suggested revisions to the tariff language. The Part A Enhancements were approved by the requisite super-majority of stakeholders, with two votes in opposition and several abstentions, at the April 15, 2020 meeting of the NYISO Management Committee. They were approved by the NYISO’s independent Board of Directors on April 20, 2020. No stakeholder exercised its right to appeal the Management Committee’s approval to the Board.

As set forth above, the independent MMU initially proposed the Part A Enhancements. The NYISO has coordinated closely with the MMU concerning the development of this filing. The NYISO’s understanding is that the MMU supports this filing.

VII. REQUESTED EFFECTIVE DATE

The NYISO respectfully asks that the Commission make this filing effective the day following the conclusion of the standard sixty day notice period established by Section 205 of the FPA, *i.e.*, on June 30, 2020. This would provide the NYISO with the time necessary to incorporate the Part A Enhancements to reflect changing circumstances in New York without any disruption or delay to the Class Year Study schedule. As noted above, it is important that the Part A Enhancements be in place before the NYISO must make BSM Determinations for Class

Year 2019. The NYISO anticipates that these determinations will not be made until August 2020. The NYISO is committed to completing the Class Year 2019 process on schedule. Proceeding with Class Year 2019 without the Part A Enhancements could result in BSM Determinations that do not fully reflect evolving system and market conditions in New York State. For example, although many CLCPA programs have not yet been initiated, the Peaker Rule, and other factors, are expected to result in the retirement of many conventional generation units in Class Year 2019. These retirements will reduce supply, thereby allowing new resources to enter without suppressing prices. It is important for the Part A Enhancements to be in place well before August so that the Part A Exemption Test can account for these changes.

VIII. 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.

IX. CONCLUSION

In conclusion, the NYISO respectfully asks that the Commission accept the proposed Part A Enhancements and make them effective the day following the conclusion of the standard sixty day statutory notice period, *i.e.*, on June 30, 2020, without imposing any conditions and without instituting any further proceedings.

Respectfully Submitted,

/s/ David Allen

David Allen

Senior Attorney

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