

December 21, 2020

By Electronic Delivery

Honorable Kimberly D. Bose Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: New York Independent System Operator, Inc., Second Compliance Filing to  
Establish Self Supply Exemption, Docket No. ER16-1404-\_\_\_\_**

Dear Secretary Bose:

In accordance with Ordering Paragraph (B) of the Commission's February 20, 2020 *Order on Compliance* in the above-captioned proceeding,<sup>1</sup> as well as the September 17, 2020 *Notice of Extension of Time*, the New York Independent System Operator, Inc. ("NYISO") respectfully submits this second compliance filing. The proposed tariff revisions modify the NYISO's Self Supply Exemption ("SSE") under the NYISO's buyer-side capacity market power mitigation rules (the "BSM Rules") in accordance with the directives of the February 20 Order.<sup>2</sup> In addition, the NYISO is proposing ministerial amendments to bring the SSE tariff language current with subsequent tariff amendments that have been made and accepted by the Commission since the SSE language was originally filed in April 2016.

The February 20 Order addressed the NYISO's compliance filing in response to the Commission's 2015 Order. That order directed the NYISO to establish both the SSE and an exemption under the BSM Rules for certain intermittent renewable resources ("Renewable Exemption").<sup>3</sup> The February 20 Order conditionally accepted the NYISO's compliance filing, but directed a series of modifications to both the SSE and the Renewable Exemption. The Commission subsequently accepted the NYISO's revisions to the Renewable Exemption.<sup>4</sup> This compliance filing contains the SSE-related revisions that were directed by the February 20 Order.

---

<sup>1</sup> *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 (2020) ("February 20 Order").

<sup>2</sup> The BSM Rules are set forth in Attachment H (Section 23) of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

<sup>3</sup> *New York State Public Service Commission, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 (2015) ("2015 Order").

<sup>4</sup> See Letter Order, *New York Independent System Operator, Inc.*, Docket No. ER16-1404-003, issued October 20, 2020.

In this second SSE compliance filing, the NYISO proposes to amend the criteria for SSE eligibility by excluding from the Self Supply Load Serving Entity or (“Self Supply LSE”) definition a public authority or corporate municipal instrumentality created by the State. The NYISO was expressly required to make this change by the February 20 Order.<sup>5</sup> The NYISO also proposes to amend the definition of “Existing Long Term Commitments” to clarify that such commitments include only long-term arrangements that have at least 10 years to run at the commencement of the relevant Class Year. In addition, the NYISO proposes to amend certain aspects of the Net Long and Net Short Thresholds, including (1) a clarification that the customer base for the Net Long Threshold will include only customers that are truly long-term, (2) a clarification regarding the treatment, in the definition of “Additional Self Supply Capacity,” of capacity that has been sold by the Self Supply LSE, and (3) revisions to the calculations of Total Capacity Costs without Entry and Total Capacity Costs with Entry in the Net Short Threshold that account for the nested structure of locational Unforced Capacity (“UCAP”) supply obligations in NYISO’s Installed Capacity (“ICAP”) Markets.

The NYISO would emphasize that the February 20 Order’s ruling restricting eligibility for the SSE and changing the definition of Existing Long Term Commitments will substantially narrow the number of MWs that may be eligible for an exemption. Given the relatively small number and size of traditional Public Power Entities in New York State, it is highly unlikely that the revised SSE could result in price suppression in the NYISO-administered capacity market. Moreover, the proposed new methodology for determining the Projected ICAP Requirements will make it more difficult for a Self Supply LSE to demonstrate that its Total Capacity Costs without Entry are lower than Total Capacity Costs with Entry, providing further assurance that the SSE will not result in price suppression. The Commission should therefore accept this compliance filing without imposing any conditions or taking any other action.

## I. COMMUNICATIONS

Communications regarding this proceeding should be sent to:

Robert E. Fernandez, Executive Vice President &  
General Counsel  
Karen Georgenson Gach, Deputy General Counsel  
Raymond Stalter, Director, Regulatory Affairs  
\*David Allen, Senior Attorney  
10 Krey Boulevard  
Rensselaer, NY 12144  
Tel: (518) 356-6000

\*Ted J. Murphy  
Brian M. Zimmet  
Hunton Andrews Kurth, LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
Tel: (202) 955-1500  
Fax: (202) 778-2201  
tmurphy@huntonak.com

---

<sup>5</sup> The NYISO recognizes that the Commission’s rulings regarding SSE eligibility are being challenged on appeal. *See New York Power Authority v. Federal Energy Regulatory Commission, Petition for Review*, United States Court of Appeals for the District of Columbia Circuit, Case No. 20-1302, filed August 13, 2020. The NYISO takes no position on the merits of that dispute. It is including SSE eligibility revisions in this filing because it was expressly required to do so by the February 20 Order.

rfernandez@nyiso.com  
kgach@nyiso.com  
rstalter@nyiso.com  
[dallen@nyiso.com](mailto:dallen@nyiso.com)

bzimmer@huntonak.com

\* Persons designated for receipt of service.

## **II. LIST OF DOCUMENTS SUBMITTED**

The NYISO submits the following documents with this transmittal letter:

1. A blacklined version of the revisions to the Services Tariff proposed by this filing (“Attachment I”);
2. A clean version of the revisions to the Services Tariff proposed by this filing (“Attachment II”);
3. A clean version of Sections 23.4.5.4, 23.4.5.5, 23.4.5.6, 23.4.5.7, 23.4.5.7.2, 23.4.5.7.3, 23.4.5.7.6, 23.4.5.7.9, 23.4.5.7.10, and 30.4 of the Services Tariff, with the language proposed in the April 13, 2016 filing in this proceeding marked in italics (“Attachment III”); and
4. A clean version of the revisions to the Services Tariff proposed in this filing, with the language filed in Docket No. ER17-2096 marked in italics (“Attachment IV”).

## **III. DESCRIPTION OF PROPOSED TARIFF REVISIONS**

### **A. Background**

The 2015 Order forms the basis for the NYISO’s SSE proposal. In particular, the 2015 Order found that:

[I]f a load serving entity, such as a municipality, cooperative, or single customer entity, self supplies the majority of its needed capacity, the amount of capacity it procures from the ICAP markets will be relatively small. Therefore, uneconomic entry would reduce the cost of procuring this portion by less than the cost of financing the uneconomic entry in the first place.<sup>6</sup>

The 2015 Order also concluded that a “self-supply exemption would serve to enable load serving entities to make decisions on the purchase of capacity that best meets their needs and to hedge their exposure to future ICAP obligations based on their reasonable expectations for the future.”<sup>7</sup> Thus, the Commission directed the NYISO to propose an SSE that is “limited to load serving

---

<sup>6</sup> 2015 Order at P 61.

<sup>7</sup> *Id.*

entities whose ICAP portfolios are consistent with reasonably anticipated levels of their future ICAP obligations.”<sup>8</sup>

The Commission directed the NYISO to develop, as part of the SSE, “appropriate net-short and net-long thresholds” in order to “avoid exempting self-supply resources that “buy” substantially more capacity (*i.e.*, that are significantly “net-short”) or that, conversely, clear or sell substantially more capacity than they “buy” (*i.e.*, that are significantly “net-long”).”<sup>9</sup> The purpose of the net-short and net-long thresholds is to “ensure that a load serving entity seeking to use the self-supply exemption does not have the incentive and ability to artificially suppress ICAP market prices; specifically, the net-short and net-long thresholds should be tight enough to prevent a load serving entity from being able to deliberately overpay for a resource in an attempt to manipulate ICAP market prices in a way that benefits the load serving entity’s other purchases from the ICAP market.”<sup>10</sup>

In April 2016, the NYISO submitted a filing to comply with the directives of the 2015 Order (“2016 SSE Filing”). In particular, the 2016 SSE Filing proposed to allow a load-serving entity with “a self supply business model” to develop a new Generator or UDR project, to enter into a Long Term Contract for capacity from such a Generator or UDR project, or to acquire additional Capacity Resource Interconnection Service (“Additional CRIS”) without being subject to an Offer Floor under the BSM Rules as long as certain conditions – including satisfaction of a Net Short Threshold and a Net Long Threshold – were met. The NYISO’s proposal was aimed at granting an SSE only to resources that had limited or no incentive and ability to suppress capacity market prices for the portion of the capacity to be subject to the exemption.

The February 20 Order accepted in part, subject to condition and an additional compliance filing, the 2016 SSE Filing. Specifically, the February 20 Order directed the NYISO to submit an additional compliance filing that limits eligibility for Self Supply LSEs to the subset of Public Power Entities that are not “public authorities or corporate municipal instrumentalities created by the State of New York,” and that modifies certain aspects of the Net Long and Net Short Thresholds, and that includes an additional process step prior to the revocation of a previously awarded Self Supply Exemption.

## **B. Proposed Compliance Revisions**

### **1. Eligibility for Self Supply Exemption**

All Self Supply LSEs are eligible for the Self Supply Exemption, and the NYISO, in the 2016 SSE Filing, proposed to define Self Supply LSE to mean:

[A] Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load

---

<sup>8</sup> *Id.* at P 62.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

obligations through its own generation and that is a Public Power Entity, “Single Customer Entity,” or “Vertically Integrated Utility.”

The definition of Self Supply LSE in the 2016 SSE Filing clarified further that:

For purposes of this definition only: (i) “Vertically Integrated Utility” means a utility that owns generation, includes such generation in a non-bypassable charge in its regulated rates, earns a regulated return on its investment in such generation, and that as of the date of its request for a Self Supply Exemption, has not divested more than seventy-five percent of its generation assets owned on May 20, 1996; and (ii) “Single Customer Entity” means an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers.

In the February 20 Order, the Commission accepted the NYISO’s proposal to define a Self Supply LSE as a load serving entity that “operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is a Public Power Entity, ‘Single Customer Entity,’ or ‘Vertically Integrated Utility.’”<sup>11</sup> At the same time, the Commission rejected NYISO’s proposal to “allow ‘public authorit[ies] or corporate municipal instrumentalit[ies], including a [NY] subsidiary thereof, created by the State of New York that own[] or operate[] generation or transmission and that [are] authorized to produce, transmit or distribute electricity for the benefit of the public’ to be eligible for the SSE.”<sup>12</sup>

In support of this ruling, the Commission found that the core elements of the SSE are “premised on the assumption that a load serving entity’s incentive is to minimize the costs of serving its specific set of customers.”<sup>13</sup> The Commission found that “[t]his assumption does not hold true for certain instrumentalities of the State, such as NYPA, because these entities act on behalf of more than their own specific set of customers (i.e., the whole state).”<sup>14</sup> According to the Commission, this factor undermines the ability of the Net Long and Net Short Thresholds to appropriately cabin the use of the SSE by such entities, and means that New York State entities

---

<sup>11</sup> February 20 Order at P 54 (citing Services Tariff § 23.2.1).

<sup>12</sup> *Id.* at P 65. The Commission’s ruling prohibits the NYISO from continuing to use the tariff defined term “Public Power Entity” in the definition of the Self Supply LSE because it rejects the first category that is identified in that definition: “a public authority or corporate municipal instrumentality, including a subsidiary thereof, created by the State of New York that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public.” However, the Commission’s order make clear that municipal and cooperative electric utilities that comprise the balance of Public Power Entities that are not created by the State of New York remain eligible to receive a SSE.

<sup>13</sup> *Id.* at P 67.

<sup>14</sup> *Id.* at P 67.

“hav[e] the incentive and ability to artificially suppress ICAP market prices, contrary to the rationale underlying the self-supply exemption, as set forth in the Complaint Order.”<sup>15</sup>

In compliance with this directive, the NYISO proposes to amend the definition of Self Supply LSE to strike the use of the tariff defined term “Public Power Entity” and replace it with the following:

(i) municipally owned electric system that owns or controls distribution facilities and provides electric service, (ii) a cooperatively owned electric system that owns or controls distribution facilities and provides electric service,

The NYISO also proposes to add a sentence to the Self Supply LSE definition that reads: “A Self Supply LSE cannot be an entity that is a public authority or corporate municipal instrumentality, including a subsidiary thereof, created by the State of New York that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public.”

With these two modifications the Services Tariff would allow municipal electric utilities and cooperatively owned electric systems to remain eligible for the SSE, while explicitly excluding a public authority or corporate municipal instrumentality created by the State of New York. The NYISO respectfully submits that these two modifications to the definition of Self Supply LSE will implement the directives, and intent, of the February 20 Order. Prohibiting small municipal or cooperative electric utilities that were created under the umbrella of state law, but that follow a traditional public power business model, would be contrary to the concerns articulated in the February 20 Order. For that reason, the compliance revisions proposed herein would distinguish corporate municipal instrumentalities created directly by the State of New York and that serve a broader state interest from local municipal and cooperative utilities that do not “act on behalf of more than their own specific set of customers (i.e., the whole state).” The latter category of municipal and cooperative utilities would remain eligible to claim the SSE.

## **2. Duration of Long-Term Contracts**

The 2016 SSE Filing proposed to allow the SSE to be granted not only to Self Supply LSEs that develop new resources themselves, but also to Self Supply LSEs that enter into Long Term Contracts with a third party for the development of a new resource. Under this circumstance, the third party developer would apply for the SSE, but the benefit of the exemption would apply to the Self Supply LSE contracting with that SSE applicant.

The NYISO proposed “to define Long Term Contract as ‘a fully executed contract’ between the self-supply exemption applicant and a self-supply load serving entity that obligates the self-supply exemption applicant to provide capacity to the self-supply load serving entity ‘for a minimum of 10 years’ in ‘an amount greater than or equal to the CRIS MW’ for which the self-

---

<sup>15</sup> *Id.*

supply exemption applicant requests an exemption.”<sup>16</sup> The NYISO also proposed, for purposes of calculating the Net Short Threshold, to define Existing Long Term Commitments as commitments with a minimum term of 10 years, and with at least six years remaining at the start of the relevant Class Year. The NYISO proposed a “look back period,” in which it would exclude from self supply capacity all megawatts that were previously granted a Self Supply Exemption in the 10-year period immediately preceding the start of the relevant Class Year.

The Commission accepted “NYISO’s proposal to define Long Term Contracts as those with a minimum term of 10 years and . . . NYISO’s proposed ‘look back’ period for purposes of calculating the net-short threshold.”<sup>17</sup> At the same time, the Commission directed “NYISO to include in the further compliance filing . . . revisions to its Services Tariff to clarify that there must be 10 years remaining on the contract at the time the self-supply exemption applicant applies” and held “that requiring a minimum of 10 years to be remaining on the contract at the time the self-supply exemption applicant applies for the exemption is necessary to ensure the exemption is only available to those load serving entities that are planning on a long term basis.”<sup>18</sup>

In compliance with this directive, the NYISO proposes to amend the definition of Existing Long Term Commitments in Section 23.4.5.7.14.3 of the Services Tariff to clarify that the term includes only Capacity that a Self Supply LSE is projected by the NYISO to receive, pursuant to a written agreement, and that has a minimum term of 10 years remaining as of the start of the relevant Class Year.

### **3. Modifications to Net Long and Net Short Thresholds**

#### **a. Inclusion of Only Captive Ratepayers**

Regarding the Net Short and Net Long Thresholds, the Commission accepted the NYISO’s proposal that “a request for a self-supply exemption will satisfy the net-short threshold if NYISO determines that the self-supply load serving entity’s Total Capacity Costs without Entry are expected to be less than the self-supply load serving entity’s Total Capacity Costs with Entry.”<sup>19</sup> However, the Commission “agree[d] with MMU that NYISO’s proposed net-long threshold may allow load serving entities to attract new retail customers without long-term commitments and satisfy the net-long threshold based on those customers.”<sup>20</sup> Thus, the Commission “direct[ed] NYISO to revise its net-long threshold calculation to clarify that the customer base for the net-long threshold will only include truly long-term customers, which would include captive ratepayers or ratepayers that are ‘sticky’ because of an ongoing long-term

---

<sup>16</sup> *Id.* at P 69.

<sup>17</sup> *Id.* at P 77.

<sup>18</sup> *Id.* at P 78.

<sup>19</sup> *Id.* at P 83.

<sup>20</sup> *Id.* at P 94.

relationship or obligation to serve.”<sup>21</sup> The Commission found “this clarification necessary to ensure that load serving entities are only granted the self-supply exemption based on long-term customers, consistent with the Commission’s rationale for directing NYISO to implement a self-supply exemption.”<sup>22</sup>

To comply with this requirement, the NYISO proposes to amend Section 23.4.5.7.14.3 to clarify that the term “Projected ICAP Requirements” is the amount of ICAP MW reasonably projected by the NYISO to “reflect[] the expected obligations” of the Self Supply LSE “to satisfy the ICAP Requirements of its long term customers.” The NYISO proposes to retain the directive that such amounts be “based on the Self Supply LSE’s and all its Affiliates’ share(s) of the Locational Minimum Unforced Capacity Requirements and the [New York Control Area (“] NYCA[“)] Minimum Unforced Capacity Requirement, as applicable and in accordance with ISO Procedures, over the three most recently completed Capability Years preceding the Class Year Start Date” but to add to that amount “any incremental long term customers that have entered contracts with the Self Supply LSE or its Affiliates with a term of 10 years or more prior to the Class Year Study’s Initial Decision Period.” This addition to the definition of “Projected ICAP Requirements” will help ensure that the customer base for the Net Long Threshold will include only those customers that are truly “sticky” over the long-term.

#### **b. Adjustments for Sales of Physical Assets**

The February 20 Order directed the NYISO to revise the definition of “Additional Self Supply Capacity” – a metric used in calculating the Net Long Threshold – to “include capacity that a self-supply load serving entity sold through the sale of the physical asset itself in the net-long threshold calculation, along with bilateral power purchase agreements.”<sup>23</sup> The Commission stated “that the sale of a physical asset would have the same effect as a bilateral power purchase agreement, and, therefore, that capacity should be included in the net-long threshold.”<sup>24</sup> The Commission then further clarified that “the sale of a physical asset could allow a self-supply load serving entity or its affiliates to build a new resource that qualifies for a self-supply exemption, sell the physical asset to satisfy the net-long threshold, and then receive a self-supply exemption to build another new resource.”<sup>25</sup>

The NYISO respectfully submits that the language of Section 23.4.5.7.14.3 defining “Additional Self Supply Capacity” already clearly incorporates both bilateral power purchase agreements and capacity associated with a sale of a physical asset by the Self Supply LSE. Specifically, that provision incorporates, with limited exceptions not relevant here, all “the ICAP MW of a Generator or UDR project that were granted a Self Supply Exemption at the time of the completed Class Year based on the Self Supply LSE or any of its Affiliates’ being a Self Supply

---

<sup>21</sup> *Id.* at P 94.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at P 98.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*



LSE for such Generator or UDR project, in the 10 year period immediately preceding the Class Year Start Date of the Class Year, in that Locality (or the NYCA) . . . .” This broad language encompasses both capacity associated with a bilateral power purchase agreement, and capacity associated with any generator that the Self Supply LSE sold to another party. Thus, the NYISO proposes to retain the existing language of Section 23.4.5.7.14.3, but to clarify that it “include[s] capacity that a self-supply load serving entity sold through the sale of the physical asset itself in the net-long threshold calculation, along with bilateral power purchase agreements.”<sup>26</sup>

**c. Reflecting Nested Structure of Localities in New Short Threshold**

The Commission directed further revisions to the definitions of Total Capacity Costs without Entry and Total Capacity Costs with Entry as those terms are used to calculate the Net Short Threshold. The Commission ordered the NYISO “to calculate Total Capacity Costs without Entry and Total Capacity Costs with Entry for purposes of the net-short threshold accounting for the nested structure of locational UCAP supply obligations in NYISO’s ICAP markets.”<sup>27</sup> The revision directed by the Commission is “to ensure that UCAP counts toward both the load serving entity’s UCAP supply obligations for the locality and for any other localities that contain the locality, as well as for NYCA as a whole.”<sup>28</sup>

The Commission’s directive in the February 20 Order appears to be referring to the fact that UCAP procured by an LSE within a Locality, either through self supply or through purchase from the ICAP Market, counts not only toward the LSE’s UCAP supply obligations in the Locality, but also toward the LSE’s UCAP supply obligation in (1) any larger Locality in which the Locality containing the UCAP resource is contained, and (2) the NYCA as a whole. The definitions of Total Capacity Costs without Entry and Total Capacity Costs with Entry are defined in Sections 23.4.5.7.14.3.1.1 and 23.4.5.7.14.3.1.2, and those sections might be read to require that an LSE’s UCAP obligation for each Locality be added together, without accounting for the fact that UCAP procured in one Locality also counts toward the LSE’s UCAP obligations in larger Localities, and in the NYCA more broadly. This is a result of the proposed definitions of Capacity Exposed to Market Prices without Entry in Section 23.4.5.7.14.3.1.1(b), and of Capacity Exposed to Market Prices with Entry in Section 23.4.5.7.14.3.1.2(b).

Capacity Exposed to Market Prices without Entry is defined as Capacity Obligations without Entry for each Locality (without accounting for the unique treatment of UCAP located within a nested Locality), minus Self Supply Capacity and Additional Self Supply Capacity. Capacity Exposed to Market Prices with Entry is calculated in a similar manner – the Capacity Exposed to Market Prices with Entry is calculated by taking Capacity Obligations with Entry (again without accounting for the unique treatment of UCAP located within a nested Locality)

---

<sup>26</sup> *Id.* at P 98.

<sup>27</sup> *Id.* at P 102.

<sup>28</sup> *Id.*

for each Locality, minus Self Supply Capacity, Additional Self Supply Capacity, and SSE Evaluated ICAP.

To address this issue, the NYISO proposes to amend the definitions of Capacity Exposed to Market Prices without Entry and Capacity Exposed to Market Prices with Entry by modifying the calculation of each to include a requirement to subtract Previously Included Capacity Exposed to Market Prices without Entry and Previously Included Capacity Exposed to Market Prices with Entry, respectively. Thus, Capacity Exposed to Market Prices without Entry will be defined as Capacity Obligations without Entry for each Locality, minus Self Supply Capacity, minus Additional Self Supply Capacity, minus Previously Included Capacity Exposed to Market Prices without Entry. Capacity Exposed to Market Prices with Entry will be defined as Capacity Prices with Entry for each Locality, minus Self Supply Capacity, minus Additional Self Supply Capacity, minus Previously Included Capacity Exposed to Market Prices with Entry.

For purposes of these calculations, the NYISO proposes to define Previously Included Capacity Exposed to Market Prices without Entry as follows:

When calculating “Capacity Exposed to Market Prices without Entry” for the New York City or Long Island Localities, “Previously Included Capacity Exposed to Market Prices without Entry” shall be zero.

When calculating “Capacity Exposed to Market Prices without Entry” for the G-J Locality, “Previously Included Capacity Exposed to Market Prices without Entry” shall be set equal to “Capacity Exposed to Market Prices without Entry” calculated for the New York City Locality.

When calculating “Capacity Exposed to Market Prices without Entry” for the NYCA, “Previously Included Capacity Exposed to Market Prices without Entry” shall be set equal to the sum of “Capacity Exposed to Market Prices without Entry” calculated for the G-J, New York City and Long Island Localities.

Similarly, the NYISO proposes to define Previously Included Capacity Exposed to Market Prices with Entry as follows:

When calculating “Capacity Exposed to Market Prices with Entry” for the New York City or Long Island Localities, “Previously Included Capacity Exposed to Market Prices with Entry” shall be zero.

When calculating “Capacity Exposed to Market Prices with Entry” for the G-J Locality, “Previously Included Capacity Exposed to Market Prices with Entry” shall be set equal to “Capacity Exposed to Market Prices with Entry” calculated for the New York City Locality.

When calculating “Capacity Exposed to Market Prices with Entry” for the NYCA, “Previously Included Capacity Exposed to Market Prices with Entry” shall be set equal to the sum of “Capacity Exposed to Market Prices with Entry” calculated for the G-J, New York City and Long Island Localities.

As a final matter, the NYISO proposes to amend Section 23.4.5.7.14.3.1 to clarify that the Net Short Calculation will be met when Total Capacity Costs without Entry are expected to be less than Total Capacity Costs with Entry, “when accounting for the nested structure of the Self Supply LSE’s ICAP Requirements.” Collectively, these proposed revisions will ensure that the nested structure of UCAP supply in the NYISO’s ICAP Markets is fully reflected in the Net Short Threshold calculations.

#### **4. Process for Revoking a Self Supply Exemption**

The Commission accepted, subject to condition, the NYISO’s proposed process for revoking a Self Supply Exemption. The Commission found “that the proposed revocation provisions are appropriate because, consistent with the Complaint Order, they narrowly tailor the exemptions to circumstances in which renewable resources and self-supply load serving entities have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.”<sup>29</sup> The Commission found further that the “NYISO’s proposed revocation provisions ensure that, under the circumstances that NYISO outlines, resources lose their exemption if they no longer qualify (or if they should never have qualified in the first place) for the applicable exemption.”<sup>30</sup> At the same time, the Commission conditioned its acceptance of the tariff revisions “on NYISO providing renewable resources and self-supply exemption applicants an opportunity to explain why revocation may be inappropriate.”<sup>31</sup> The Commission stated further that the “NYISO should use the language in Proposed Services Tariff Section 23.4.5.7.14.5 as a model.”<sup>32</sup>

To implement this directive, the NYISO proposes to amend Section 23.4.5.7.14.5 of the Services Tariff to provide SSE Applicants and Self Supply LSEs with an opportunity to rebut a proposed SSE revocation. Section 23.4.5.7.14.5(a) addresses the revocation of an SSE prior to the time that the applicable resource first produces Energy, and requires that the “SSE Applicant and the Self Supply LSE . . . notify each other and the ISO in writing within 3 business days of the event or basis for the failure to meet the requirements for a Self Supply Exemption.” The NYISO proposes to add to this section additional processes requiring the NYISO to provide written notice of its intent to revoke the SSE, and giving the SSE Applicant and the Self Supply LSE an opportunity to rebut the NYISO’s intent to revoke. Specifically, the NYISO proposes to add to this section the following language:

Within 10 business days of its receipt of this notification, the ISO shall provide written notice of its intent to revoke the Self Supply Exemption that specifies its findings. The ISO will provide an opportunity for the SSE Applicant or Self Supply LSE to schedule a joint meeting with the ISO within 20 business days from the date of its notice of intent to revoke the Self Supply Exemption. The

---

<sup>29</sup> *Id.* at P 141.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at P 146.

<sup>32</sup> *Id.*

purpose of the meeting will be to allow the submittal of additional documentation and other facts that could rebut the findings of the ISO that were identified in its notice of intent to revoke the Self Supply Exemption. The ISO shall determine within 10 business days of this joint meeting whether the revocation of the Self Supply Exemption shall be finalized and then shall post on its website its determination to revoke the Self Supply Exemption.

Section 23.4.5.7.14.5(b), in turn, governs revocation of an SSE for an operating resource, and requires that the NYISO provide notice to the SSE Applicant or Owner/Operator of the Generator that the SSE is subject to revocation. The NYISO proposes to add language providing that the “written notice shall provide to the Self Supply Applicant, or the Owner/Operator of the Generator or UDR, and the Self Supply LSE an opportunity to submit documentation to the ISO and meet jointly with the ISO to rebut the ISO’s findings within 30 days from the date of the ISO’s written notice.” The updated language proposed by the NYISO requires the NYISO to “determine within 10 business days of this meeting whether the revocation of the Self Supply Exemption shall be finalized and post on its website its determination to revoke the Self Supply Exemption.”

These proposed compliance revisions are fully consistent with similar language governing revocation of the Renewable Exemption that the Commission accepted in October 2020.<sup>33</sup>

## **5. Conforming and Miscellaneous Tariff Revisions**

Included in the April 13, 2016 filing in this proceeding were proposed revisions to Sections 23.4.5 and 30.4 of the Services Tariff.<sup>34</sup> The NYISO is not proposing further revisions to the sections, but includes them again here to establish the same effective date for the April 13, 2016 language as the date proposed for the compliance revisions in this filing. Attachment III to this transmittal letter is a clean version of those sections with the language filed on April 13, 2016 marked in italics.

In prior filings in Docket Nos. ER17-2096<sup>35</sup> and ER18-80<sup>36</sup> the NYISO requested flexible effective dates for certain proposed tariff revisions that referenced its then-pending Renewable Exemption and SSE. In both filings, the NYISO indicated that it would give notice

---

<sup>33</sup> See Letter Order, *New York Independent System Operator, Inc.*, Docket No. ER16-1404-003, issued October 20, 2020 (accepting NYISO’s April 7, 2020 Renewable Exemption compliance filing, including Sections 23.4.5.7.13.3.1 and 23.4.5.7.13.3.3).

<sup>34</sup> Section 23.4.5 was subsequently divided into subsections in 2019.

<sup>35</sup> See NYISO’s Proposed Enhancements to “Buyer-Side” Market Power Mitigation Measures for Installed Capacity, Docket No. ER17-2096-000, July 14, 2017.

<sup>36</sup> See NYISO’s Proposed Tariff Revisions Regarding Interconnection Process Improvements, Docket No. ER18-80-000, October 16, 2017.

and make additional filings in those dockets to establish specific effective dates for the relevant revisions shortly after the Commission accepted the revisions proposed in this proceeding.

When the NYISO made those commitments it did not anticipate how much time would pass before final versions of the Renewable Exemption and Self Supply Exemption were accepted in this proceeding. In the time since those commitments were made, Docket Nos. ER17-2096 and ER18-80 were closed. Further, revisions proposed in Docket No. ER18-80 were deleted in a subsequent filing that was accepted by the Commission on January 31, 2020, and no longer exist in the tariff.<sup>37</sup> It is therefore no longer possible for the NYISO to make a filing to establish specific effective dates and re-file the underlying tariff revisions in those proceedings.

Accordingly, the NYISO is including in the tariff sections filed herewith the revisions that were filed and accepted with an open effective date in Docket No. ER17-2096. Those revisions also affected Services Tariff Section 23.4.5.7.15, which will be included. The revisions will receive the same effective date as the compliance revisions proposed above. This is the most practical and effective method of satisfying the NYISO's prior commitments. Attachment IV to this letter is a clean version of the language proposed in this filing with the language filed in ER17-2096 marked in italics.

#### **IV. STAKEHOLDER PROCESS**

The NYISO shared its proposed compliance tariff revisions with stakeholders before submitting this filing. The proposed compliance tariff revisions were discussed at the December 17, 2020 meeting of the stakeholder Installed Capacity Working Group and further revised in response to those discussions.

#### **V. EFFECTIVE DATE**

The NYISO respectfully requests that the tariff revisions included herein be made effective the day following the conclusion of the standard sixty day notice period applicable under Section 205 of the Federal Power Act, *i.e.*, on February 20, 2021.

#### **VI. 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).

---

<sup>37</sup> See Letter Order, *New York Independent System Operator, Inc.*, Docket No. ER20-638-000, issued January 31, 2020

## VII. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the compliance tariff revisions, and the conforming changes, proposed in this filing and make them effective as of February 20, 2021.

/s/ Brian M. Zimmet

Brian M Zimmet  
Counsel for the  
New York Independent System Operator, Inc.  
bzimmet@huntonak.com

cc: Jignasa Gadani  
Jette Gebhart  
Leanne Khammal  
Kurt Longo  
John C. Miller  
David Morenoff  
Larry Parkinson  
Douglas Roe  
Frank Swigonski  
Eric Vandenberg  
Gary Will