

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

**Brookfield Renewable Trading and Marketing, LP**

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**Docket No. ER22-359-000**

**MOTION TO INTERVENE AND COMMENTS OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) moves to intervene and submits comments in the above-referenced proceeding.

**I. Overview**

On November 5, 2021, Brookfield Renewable Trading and Marketing, LP (“Brookfield”) filed a request for waiver of tariff provisions associated with Brookfield’s External Capacity Resource Interconnection Service Rights (“External CRIS Rights”) for the months of November through March (“Brookfield’s Winter External CRIS Rights”) in order that Brookfield may voluntarily and permanently relinquish such External CRIS Rights.<sup>2</sup> The Waiver Request, if granted, would allow the NYISO to accept the return of Brookfield’s Winter External CRIS Rights and would relieve Brookfield of the penalties associated with the failure to offer capacity associated with such Winter External CRIS Rights in the NYISO’s Installed Capacity (“ICAP”) Market.

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2019).

<sup>2</sup> *Brookfield Renewable Trading and Marketing, LP*, Petition for Limited, Prospective Waiver and Request for Shortened Comment Period and Expedited Consideration, Docket No. ER22-359-000 (November 5, 2021) (“Waiver Request”).

The NYISO does not oppose Brookfield's requested waiver and supports Brookfield's request for shortened comment period and for a Commission order by December 13, 2021. The NYISO respectfully requests that the Commission consider these comments in its determination regarding the relief requested.

## **II. Motion to Intervene**

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Additionally, the NYISO administers the interconnection process and NYISO Installed Capacity Markets pursuant to its Commission-approved tariffs. Brookfield's Waiver Request implicates the manner in which the NYISO treats certain External CRIS Rights in its administration of these procedures and markets. The NYISO, therefore, has a unique interest in this proceeding that cannot be adequately represented by any other entity and, accordingly, requests that the Commission permits the NYISO to intervene with all the rights of a party.

## **III. Background**

Brookfield holds External CRIS Rights that allow it to import capacity into the New York Control Area ("NYCA") from resources located outside of the NYCA. External CRIS Rights provide the holder with a long-term ability to import capacity without being subject to certain requirements that would otherwise apply, including an annual deliverability evaluation (within the NYCA) and the obligation to obtain "import rights." In order to obtain this long-term right, an entity must commit to supply the specified MW of External Installed Capacity to the NYCA for a minimum Award Period of five years. Requesting entities that are awarded External CRIS

Rights are required to offer the full number of MW for each month that they hold External CRIS Rights within the offer cap specified in the OATT.

The NYISO OATT states that entities holding External CRIS Rights under a Non-Contract Commitment<sup>3</sup> must offer the committed capacity (a) in at least one of the following NYCA auctions: the Capability Period Auction, the Monthly Auction or the ICAP Spot Market Auction, or (b) through a certified and scheduled Bilateral Transaction. The summer Non-Contract CRIS MW must be offered for every month of the Summer Capability Period, and the winter Non-Contract CRIS MW must be offered for every specified winter month (if any).<sup>4</sup> In each instance that an entity fails to offer capacity in accordance with OATT requirements, such failure constitutes a Supply Failure for which the External CRIS Right holder incurs a financial penalty.<sup>5</sup> Upon the fourth instance within the period for which the External CRIS Rights were awarded or the fourth instance within a subsequent renewal period of a Supply Failure, the associated External CRIS Rights will be terminated in their entirety with no ability to renew.<sup>6</sup>

Brookfield holds both Summer and Winter External CRIS Rights; however the only External CRIS Rights relevant to the Waiver Request are the following Winter External CRIS Rights held by Brookfield under a Non-Contract Commitment:

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<sup>3</sup> The NYISO OATT distinguishes between ECRs for which the holder makes a Contract Commitment via bilateral contract(s) and ECRs held under a Non-Contract Commitment. *See* OATT Sections 25.7.11.1.1 and 25.7.11.1.2. As noted by Brookfield, the ECRs subject to the Waiver Request are held by Brookfield under a Non-Contract Commitment. *See* Waiver Request at 6.

<sup>4</sup> *See* OATT Section 25.7.11.1.2.3.

<sup>5</sup> The ECR holder that commits a Supply Failure shall pay NYISO an amount equal to 1.5 times the Installed Capacity Spot Auction Market Clearing Price for the month in which either the capacity under Non-Contract Commitment was not offered or the Contract Commitment to supply ICAP was not certified, times the number of MW committed under the Non-Contract or Contract Commitment but not offered. *See* OATT Section 25.7.11.1.3.

<sup>6</sup> *Id.*

- November: 196 MW
- December through March: 239 MW
- April: 196 MW

#### **IV. Comments**

The NYISO understands Brookfield to be requesting waiver of the obligations applicable to its Winter External CRIS Rights set forth in OATT Section 25.7.11 and the applicable subsections due to the inability for Brookfield to meet such obligations going forward – upon consummation of the pending transaction whereby Brookfield will no longer have the ability to rely on capacity from the Lievre facilities currently used to satisfy Brookfield’s Winter External CRIS Right obligations.<sup>7</sup> In other words, Brookfield is seeking to terminate its Winter External CRIS Rights and “return” them to the NYISO.

The NYISO recognizes that the Commission evaluates a waiver request based on the specific facts and circumstances of the request, and upon a number of factors, including (i) whether the requestor is acting in good faith; (ii) whether the request will remedy a concrete problem; (iii) whether the request is of limited scope; and (iv) whether the waiver, if granted, will have undesirable consequences such as harming third parties.<sup>8</sup> The Commission’s evaluation of a waiver request is highly dependent on the specifics of a particular request, and

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<sup>7</sup> See Waiver Request at 9.

<sup>8</sup> See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (2013); *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013); *Hudson Transmission Partner, LLC*, 131 FERC ¶ 61,157 at P 10 (2010).

the Commission has recognized that the granting of a waiver request is not precedent for granting future waiver requests.<sup>9</sup>

Given the unique circumstances detailed in the Waiver Request, the NYISO does not oppose the relief requested.<sup>10</sup> Most notably, the Waiver Request is limited to a discrete amount of External CRIS Rights for the remainder of the Award Period.<sup>11</sup> The Waiver Request does not encompass Summer External CRIS Rights, the relinquishment of which can impact the base case assumptions for deliverability analyses, and the NYISO is not aware of any adverse impact the requested waiver could have on other projects in the NYISO's interconnection queue or on other parties participating in the NYISO's Installed Capacity Markets.

## **V. Guidance Requested**

As discussed herein, the NYISO has no opposition to Brookfield's Waiver Request; however, should the Commission grant the Waiver Request, the NYISO requests the Commission confirm the following to avoid any ambiguity in the implementation of the Commission's order:

- Upon a Commission order granting the Waiver Request and notice from Brookfield to the NYISO relinquishing its Winter External CRIS Rights, the MW associated with the Winter External CRIS Rights will no longer be reserved for the sole use of

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<sup>9</sup> See *PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company*, 144 FERC ¶ 61,060 at P 17 (noting that the granting of the requested waiver "is based on the specific facts and circumstances of the request"); see also, *Air Energy TCI, Inc.*, 143 FERC ¶ 61,172 at P 16 (2013) (noting that "our grant of waiver is limited to the facts and circumstances of the case before us").

<sup>10</sup> The NYISO's position on the Waiver Request should not be construed as agreement with Brookfield's contention that relinquishment of its Winter ECRs "is analogous to situations in which an entity with market-based rate authority files a notice of cancellation of its MBR Tariff, which the Commission routinely accepts." Waiver Request at 3. NYISO takes no position on the applicability of such situations to the relinquishment of ECRs.

<sup>11</sup> The current Award Period for Brookfield's Winter ECRs runs through October 2030.

Brookfield and will be made available for other imports pursuant to applicable ISO Procedures. The immediate effect will be that the NYISO will increase Import Rights available for the month immediately following the month in which termination occurs.<sup>12</sup> Specifically, the NYISO will implement this External CRIS Right relinquishment as set forth in the table below. This table is based on the dates the NYISO posts available Import Rights each month. This is critical to the treatment of the relinquished External CRIS Rights because Import Rights are made available on a first-come, first-served basis with any remaining Import Rights being available in the Installed Capacity auction for the following month.<sup>13</sup>

<b>Date of Brookfield's Relinquishment Notice</b>	<b>Date of Commission Order</b>	<b>Treatment of Winter External CRIS Rights</b>
On or before 12/13/2021	On or before 12/13/2021	NYISO will include the MW associated with Brookfield's Winter External CRIS Rights in the available Import Rights for the January 2022 capacity month. Brookfield's Winter External CRIS Rights would terminate on December 31, 2021.
Between 12/13/2022 and 1/12/2022	On or before 1/12/2022	NYISO will include the MW associated with Brookfield's Winter External CRIS Rights in the available Import Rights for the February 2022 capacity month. Brookfield's Winter External CRIS Rights would terminate on January 31, 2022.

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<sup>12</sup> The auction occurs during the month in which termination occurs for the following month.

<sup>13</sup> For each upcoming Capability Year, the NYISO establishes the maximum amount of External Installed Capacity that may be imported to the NYCA from each neighboring External Control Area. The NYISO then sets the Import Rights limit at the amount of External Installed Capacity that is deliverable to the NYCA across External Interfaces. On the date the NYISO posts available Import Rights each month, the NYISO makes Import Rights, up to the Import Rights limit, available for allocation to Market Participants. These Import Rights are available to Market Participants through the first-come, first-served Import Right request and allocation process, and if any are remaining thereafter, through the Installed Capacity auction.

Between 12/13/2021 and 2/9/2022	On or before 2/9/2022	NYISO will include the MW associated with Brookfield's Winter External CRIS Rights in the available Import Rights for the March 2022 capacity month. Brookfield's Winter External CRIS Rights would terminate on February 28, 2022.
Between 12/13/2021 and 3/15/2022	On or before 3/15/2022	NYISO will include the MW associated with Brookfield's Winter External CRIS Rights in the available Import Rights for the April capacity month. Brookfield's Winter External CRIS Rights would terminate on March 31, 2022.
Between 12/13/2021 and 5/31/2022	3/15/2022 – 5/31/2022	NYISO will include the MW associated with Brookfield's Winter External CRIS Rights in the available Import Rights for the November capacity month. Brookfield's Winter External CRIS Rights would terminate on April 30, 2022.

- The NYISO will treat the relinquishment of Brookfield's Winter External CRIS Rights consistent with the manner in which it would treat External CRIS Rights terminated due to an External CRIS Right holder exceeding the number of allowable Supply Failures, consistent with Section 4.10.9 of the NYISO Installed Capacity Manual,<sup>14</sup> thereby triggering a recalculation of monthly Import Rights.
- Unless and until a Commission order grants the Waiver Request and Brookfield provides notice to the NYISO relinquishing its Winter External CRIS Rights, Brookfield remains bound by all applicable tariff and manual provisions applicable to

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<sup>14</sup> Section 4.10.9 of the NYISO Installed Capacity Manual, Version 6.4.9 (May 25, 2021) provides:

When the Supply Failure threshold identified in Section 25.7.11 of the NYISO OATT Attachment S is exceeded, that External CRIS Right (both Contract and Non-Contract MWs) will be terminated. An External CRIS Rights Holder whose Right has been terminated due to exceeding the number of allowable Supply Failures and who has sold Capacity in future Capability Period or Monthly Auctions retains the obligation to supply that Capacity. Termination of an External CRIS Right will trigger a recalculation of deliverability headroom and resulting monthly Import Right limits using the shift factors determined in the most recent Import Rights Deliverability Study and removing the amount of megawatts of the terminated External CRIS Right that remains unsold for the remainder of the Capability Period.

- its Winter External CRIS Rights, including its offer commitments under OATT Section 25.7.11.1 and associated Supply Failure penalties; and
- Failure by Brookfield to provide notice to the NYISO relinquishing its Winter External CRIS Rights by May 31, 2022 – a contingency upon which the Waiver Request is based – would result in Brookfield’s inability to relinquish its Winter External CRIS Rights absent a subsequent Commission order.

## **VI. Comments in Support of Expedited Treatment**

The NYISO supports Brookfield’s request that the Commission expedite its review of this waiver request and issue an Order by December 13, 2021 in order to ensure the NYISO can implement the Commission’s Order, if granted, in advance of the NYISO’s Installed Capacity Market spot auction for January 2022. The NYISO also supports Brookfield’s request for a shortened comment period.

## **VII. Communications and Correspondence**

All communications and service with regard to this filing should be directed to:

Robert E. Fernandez, Executive Vice President & General Counsel  
Raymond Stalter, Director of Regulatory Affairs  
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\* Persons designated for receipt of service.



## VIII. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission (i) rule on the Waiver Request by December 13, 2021 and (ii) consider these comments in making its decision on Brookfield's Waiver Request.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan  
Counsel for the New York Independent System  
Operator, Inc.

November 22, 2021

cc:	Janel Burdick	Leanne Khammal	Douglas Roe
	Matthew Christiansen	Kurt Longo	Frank Swigonski
	Jignasa Gadani	Robert Fares	Eric Vandenberg
	Jette Gebhart	David Morenoff	Gary Will

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY, this 22<sup>nd</sup> day of November, 2021.

/s/ Mitchell W. Lucas

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