

March 11, 2022

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., Response to the Commission Staff's February 9, 2022 Letter and Submission of Revised Tariff Records, Docket No. ER22-772-001**

Dear Secretary Bose:

The New York Independent System Operator, Inc. ("NYISO") respectfully submits its response to the February 9 Letter issued by Mr. Kurt M. Longo, the Commission's Director of the Division of Electric Power Regulation – East in Docket No. ER22-772-000 (the "February 9 Letter"). The February 9 Letter requested additional information concerning the NYISO's January 5, 2022 filing ("January 5 Filing")<sup>1</sup> under Section 205 of the Federal Power Act ("FPA").

The NYISO's responses to the February 9 Letter are included in Attachment I hereto. The NYISO's responses further demonstrate that the January 5 Filing's proposed tariff revisions (the "NYISO Proposal") were just, reasonable, not unduly discriminatory, and consistent with the Commission's "rule of reason" policy. The responses should allay potential concerns with any aspect of the NYISO Proposal, including the marginal capacity accreditation design. The NYISO therefore renews its request that the Commission issue an order expressly accepting the NYISO Proposal and making it effective on May 11, 2022.

The comments and answers submitted since the January 5 Filing further demonstrate that the NYISO Proposal is just, reasonable, not unduly discriminatory, and consistent with the rule of reason. NYISO stakeholders, and the parties in this case, overwhelmingly support the NYISO Proposal. No party submitted a conventional protest, although a few filed comments that raised questions about the marginal accreditation design while supporting the rest of the NYISO Proposal.<sup>2</sup> The New York State Public Service Commission ("NYPSC") and New York State Energy Research and Development Authority ("NYSERDA") (together the "NYS Entities"), the

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<sup>1</sup> New York Independent System Operator, Inc., *Excluding Certain Resources from the "Buyer-Side" Capacity Market Power Mitigation Measures, Adopting a Marginal Capacity Accreditation Market Design, and Enhancing Capacity Reference Point Price Translation*, Docket No. ER22-772-000 (January 5, 2022).

<sup>2</sup> The NYISO will address comments that questioned the stakeholder process, the analyses supporting the January 5 Filing, and other matters in its answer in this proceeding. Immediately after the February 9 Letter was issued, the NYISO timely sought an extension of time to submit that answer.

New York State Department of State's Division of Consumer Protection Utility Intervention Unit, the independent Market Monitoring Unit ("MMU"), the New York Transmission Owners ("NYTOs"), the Independent Power Producers of New York, Inc ("IPPNY"), New York City, and other stakeholders all filed comments supporting the NYISO Proposal.

The endorsement of the NYS Entities is particularly important given the central role that they will play in overseeing and implementing New York State's Climate Leadership and Community Protection Act ("CLCPA"). The NYS Entities expressly stated that the marginal accreditation design is a workable framework that should be accepted and developed further, exactly as the NYISO has proposed.<sup>3</sup>

In addition, the MMU has provided additional arguments demonstrating that the marginal capacity accreditation design should be accepted. Among other things, the MMU explained that the NYISO Proposal: (i) was clear and would provide sufficient information to market participants;<sup>4</sup> (ii) would not result in over-procurement of capacity;<sup>5</sup> (iii) would not compromise reliability;<sup>6</sup> and (iv) would provide efficient compensation for all resources.<sup>7</sup>

Prompt Commission action continues to be necessary. As the January 5 Filing stated, the NYISO expects that it will be required to make Offer Floor and exemption determinations under the existing version of its "buyer-side" capacity market power mitigation measures (the "BSM Rules") in July or August of this year. Leaving those rules in place could result in over-mitigation of new projects included in the NYISO's Class Year 2021 interconnection study process.

The need for the NYISO Proposal is in no way diminished by the Commission's recent order addressing rehearing arguments and accepting the NYISO's "Part A Enhancements"<sup>8</sup> in Docket No. ER20-1718 (the "Part A Rehearing Order").<sup>9</sup> The Part A Rehearing Order directed the NYISO to make a compliance filing specifying when the Part A Enhancements will be implemented. That compliance filing is currently due on March 21, 2022.

The Commission's actions in the Part A Enhancements proceeding are highly relevant, however, as an example of what the Commission should *not* do in this proceeding. If the

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<sup>3</sup> See NYS Entities at 16.

<sup>4</sup> See *Motion for Leave to Answer and Answer of the NYISO Market Monitoring Unit*, Docket No. ER22-772-000 (Feb. 11, 2022) ("MMU Answer") at 3-6.

<sup>5</sup> *Id.* at 6-11.

<sup>6</sup> *Id.* at 11-12.

<sup>7</sup> *Id.* at 12-18.

<sup>8</sup> The Part A Enhancements are intended to improve the BSM Rules so that they would 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.

<sup>9</sup> *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022).

Commission does not accept the January 5 Filing, it would repeat what then-Commissioner Glick described, in his dissent from the Commission's original order rejecting the Part A Enhancements, as fundamental mistakes. Specifically:

The proposal received a super-majority of votes in the stakeholder process and not a single party protested this issue before the Commission, including any of the generator groups that have cheered on the Commission's slew of recent buyer-side mitigation orders. But, of course, the Commission thinks it knows better than NYISO's stakeholders, better than NYISO's Market Monitoring Unit, better than the New York State Public Service Commission, and better than the people of New York. In rejecting NYISO's proposal, the Commission makes clear how little it cares about stakeholder compromise or the consequences its actions will have for the practical reality of running an organized wholesale market.<sup>10</sup>

The Commission is now once again presented with a proposal that received super-majority stakeholder support, was not the subject of any protests,<sup>11</sup> was endorsed by New York State and all major stakeholder sectors, and will not have adverse effects on other regions. The NYISO Proposal is a legally durable resolution to years of tensions between state clean energy policies and the requirements of the Federal Power Act. The Commission should promptly issue an order expressly accepting the January 5 Filing. To do otherwise would be inconsistent with the Section 205 standard of review<sup>12</sup> and with principles of cooperative federalism.

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<sup>10</sup> *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,206 (2020), Glick, Comm'r dissenting at P 12.

<sup>11</sup> No party filed a conventional protest against the January 5 Filing. The PEAK Coalition styled its pleading "Protest-Comments" which is not a form traditionally used in Commission proceedings. In any event, like a few other commenters, the PEAK Coalition supported the NYISO Proposal except for the marginal accreditation design. The January 5 Filing enjoys a level of support at least as great as the Part A Enhancements. All parties supported the Part A Enhancements as a whole although a few raised "limited protests" that went to secondary implementation questions.

<sup>12</sup> Under Section 205, 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. It need only show that its proposals are just, reasonable, and not unduly discriminatory. *See, e.g., Me. Pub. Utils. Comm'n v. FERC*, 520 F.3d 464, 470-71 (D.C. Cir. 2008) ("[T]here 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."), *rev'd in part on other grounds sub nom. NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165 (2010); *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 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 & Elec. Co.*, 114 FERC ¶ 61,282, at P 29 (2006) ("[T]he just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient

The February 9 Letter stated that this response must include at least one tariff record and will trigger a new sixty-day notice period. Attachment II to this letter resubmits all of the redlined tariff revisions initially submitted in the January 5 Filing, including updated redlined versions of Sections 2.3<sup>13</sup> and 5.12<sup>14</sup> of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). The updates are non-substantive corrections and are described further in footnotes 13 and 14. Attachment III resubmits a clean version of the tariff revisions. The NYISO requests that the tariff revisions be made effective on May 11, 2022, *i.e.*, immediately after the end of the statutory sixty-day notice period.

Finally, Attachment IV to this letter is the Affidavit of Mr. Zachary T. Smith which confirms the accuracy of all of the factual statements contained in the NYISO responses in Attachment I.

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

Respectfully Submitted,

/s/ Ted J. Murphy

Ted J. Murphy

Hunton Andrews Kurth LLP

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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).

<sup>13</sup> After making the January 5 Filing, the NYISO determined that Services Tariff Section 2.3 was filed using a base that inadvertently omitted language that the Commission accepted in *N.Y. Indep. Sys. Operator, Inc.*, 174 FERC ¶ 61,242 (2021), which became effective on December 15, 2021. The omitted language has been restored to the section included in Attachments II and III.

<sup>14</sup> After making the January 5 Filing, the NYISO determined that Section 5.12 was filed using a base that inadvertently included tariff provisions that the Commission accepted in *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,033 (2020)), but are not yet effective. The pending effective language has been removed from the section included in Attachments II and III.

## **CERTIFICATE OF SERVICE**

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

Dated at Rensselaer, NY this 11<sup>th</sup> day of March 2022.

/s/ Mitchell W. Lucas

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