

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

**New York Independent System
Operator, Inc.**

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)

Docket No. ER22-772-00_

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this answer to certain comments by the Clean Energy Advocates (“CEA”), Equinor Wind, LLC (“Equinor”), and the City of New York (“NYC”) in the above-captioned proceeding. The NYISO also briefly addresses the “Protest Comments” submitted by the PEAK Coalition.

The referenced pleadings address the NYISO’s January 5, 2022 filing (“January 5 Filing”)² under Section 205 of the Federal Power Act (“FPA”). The January 5 Filing included proposed revisions to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) to enhance the currently effective “buyer-side” capacity market power mitigation measures (“BSM Rules”), improve the valuation of resources’ capacity contributions, and enhance the procedures for defining Installed Capacity (“ICAP”) Demand Curves³ to better reflect a rapidly changing resource mix (the “NYISO Proposal”).

¹ 18 C.F.R § 385.213 (2021). The NYISO timely sought an extension of time to submit this answer. *See Motion for Extension of Time to Answer of the New York Independent System Operator, Inc.*, Docket No. ER22-772-000 (Feb. 10, 2022).

² 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 (Jan. 5, 2022).

³ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article II of the Services Tariff.

This answer principally addresses comments that object to the marginal accreditation design. For the reasons set forth below, and incorporated by reference herein from the NYISO's March 11 Response,⁴ the Commission should not be swayed by any of these objections. The Commission should accept the NYISO Proposal in its entirety and make it effective as of May 11, 2022.⁵

I. REQUEST FOR LEAVE TO ANSWER

The Commission's procedural rules authorize answers to pleadings that are styled as comments as a matter of right.⁶ CEA, Equinor, and NYC all filed "comments" which the NYISO is entitled to answer. The NYISO should also be permitted to answer the PEAK Coalition's "Protest Comments" as of right because Rule 213 establishes that answers may be made to pleadings not styled as "protests" but does not specifically prohibit answers to pleadings styled as "protest comments."

In the alternative, the NYISO respectfully requests leave to answer to the extent that the Commission deems comments that raise objections to the marginal capacity accreditation design, or the PEAK Coalition's filing, to be tantamount to protests,. The Commission has discretion to accept answers to protests and has routinely done so when an answer: (1) will lead to a more complete and accurate record; (2) helps the Commission better understand the issues; (3) clarifies matters in dispute or errors; or (4) provides information that will assist the

⁴ See 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 (March 11, 2022) ("March 11 Response").

⁵ The January 5 Filing originally proposed that the NYISO's tariff revisions become effective on March 6, 2022. However, the NYISO's March 11 Response re-submitted all of the tariff revisions included in the January 5 Filing and requested that they go into effect on May 11, 2022.

⁶ 18 C.F.R § 385.213(a)(2) & (3).

Commission in rendering a decision.⁷ This answer should be accepted under these criteria because it corrects various mischaracterizations and misstatements that certain commenters have made concerning marginal accreditation. Allowing this answer will ensure that the Commission's decision in this proceeding is based on a complete and accurate record.

II. ANSWER

A. **THE COMMISSION SHOULD ACCEPT THE NYISO PROPOSAL IN ITS ENTIRETY BECAUSE IT IS JUST AND REASONABLE, ENJOYS BROAD STAKEHOLDER SUPPORT, AND REPRESENTS A DURABLE SOLUTION TO LONGSTANDING POLICY AND JURISDICTIONAL CONFLICTS**

The NYISO Proposal was voluntarily submitted under Section 205 after obtaining the necessary approvals under the NYISO's shared governance system, *i.e.*, approval by a supermajority of stakeholders and by the NYISO's independent Board of Directors. In fact, as discussed further, the approval by stakeholders in the NYISO's shared governance system far exceeded the supermajority level necessary for approval. The January 5 Filing demonstrated that the NYISO Proposal was just, reasonable, and not unduly discriminatory in its entirety. The Commission must therefore accept the NYISO Proposal, including the marginal accreditation design, under the Section 205 standard of review.⁸

⁷ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,028 (2017) (accepting answers to protests that provided information that assisted the Commission's decision making process); *N.Y. Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058 (2011) (accepting answers to protests because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *N.Y. Indep. Sys. Operator, Inc.*, 99 FERC ¶ 61,246 (2002) (accepting answers to protests that help clarify issues and did not disrupt the proceeding); *N.Y. Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,218 (2000) (accepting an answer deemed useful in addressing issues arising in the proceeding at issue); *Morgan Stanley Cap. Grp., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017 (2000) (accepting an answer that was helpful in the development of the record).

⁸ The Commission plays a "passive and reactive" role when reviewing Section 205 filings. *NRG Power Mkg, LLC v. FERC*, 862 F.3d 108, 114 (D.C. Cir. 2017); *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) ("[S]ection 205 is intended for the benefit of the utility . . . and FERC plays an essentially passive and reactive role under section 205" (internal quotations and citations omitted)); see

There is overwhelming and multi-sector support for the January 5 Filing. The NYISO Proposal received the vote of over 82 percent of stakeholders, well above the 58 percent super-majority threshold required for approval. The extent of the support is even more apparent now that comments have been filed. The New York State Public Service Commission (“NYPSC”) and New York State Energy Research and Development Authority (“NYSERDA”) (together the “NYS Entities”), the New York State Department of State’s Division of Consumer Protection Utility Intervention Unit (“UIU”), the independent Market Monitoring Unit (“MMU”) for the NYISO, the New York Transmission Owners (“NYTOs”), the Independent Power Producers of New York, Inc (“IPPNY”), NYC, and other stakeholders all filed in support of the NYISO Proposal. The endorsement of the NYS Entities is particularly important given the central role they will play in overseeing and implementing New York State’s Climate Leadership and Community Protection Act (“CLCPA”). The NYS Entities stated that the marginal accreditation design is a workable framework that should be accepted and developed further, just as the NYISO has proposed.⁹

In addition, the independent MMU, Potomac Economics, Ltd., has filed two pleadings that strongly support the NYISO Proposal, including the marginal capacity accreditation design.¹⁰ IPPNY, which represents competitive suppliers, and the UIU, which is charged with

also, 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.”).

⁹ See *Comments of the New York State Public Service Commission and the New York State Energy Research and Development Corp.*, Docket No. ER22-772-000 (Jan. 26, 2022) (“Comments of NYS Entities”) at 16.

¹⁰ See *Motion to Intervene and Comments of the NYISO Market Monitoring Unit*, Docket No. ER22-772-000 (Jan. 26, 2022) (“MMU Comments”) and *Motion for Leave to Answer and Answer of the NYISO Market Monitoring Unit*, Docket No. ER22-772-000 (Feb. 11, 2022) (“MMU Answer”).

protecting the interests of New York State consumers, both submitted expert testimony that reinforced the merits of the January 5 Filing.

The only opposition to the NYISO Proposal comes from a handful of entities that object to the marginal capacity accreditation component of the market design. The CEA Comments develop these objections at greatest length. However, as discussed throughout this answer, the attacks on the marginal capacity accreditation design are devoid of merit. A decision to reject the marginal capacity accreditation design based on such meritless contentions would be arbitrary and capricious under the Administrative Procedure Act.¹¹ Furthermore, the Commission's authority to alter the NYISO Proposal by accepting portions of the January 5 Filing while rejecting or materially modifying others is hardly as clear¹² as CEA claims.¹³ The January 5 Filing might not have been approved by stakeholders in the first place if the marginal accreditation design had not been included.¹⁴ In short, granting the relief requested by CEA would not just be a fundamental mistake on the substantive merits. Ruling for CEA would also likely prompt extensive litigation that would undermine the durability of the NYISO's revisions to the BSM Rules and could impede New York's clean energy transition.

¹¹ See 5 U.S.C. § 706; see also *Motor Vehicle Mnfs Assoc 'n of the United States, Inc. v. State Farm Mut.l Auto Ins. Co.*, 469 U.S. 49, 63 (1983); *FERC v. Elec. Power Supply Ass'n*, 136 S.Ct. 760, 782 (2016); *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1260 (D.C. Cir. 2018); *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995); *Dominion Res., Inc. v. FERC*, 286 F.3d 586, 492 (D.C. Cir. 2002).

¹² See, e.g., *Cities of Bethany v. FERC*, 727 F.2d 1131 (D.C. Cir. 1984); and *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017). see also *Limited Answer of Calpine Corp. Eastern Generation, and Vistra Corp.*, Docket No. ER22-772-000 (Feb. 16, 2022) (arguing that the Commission lacks authority under FPA Section 205 to either: (i) reject the marginal capacity accreditation design while accepting the rest of the NYISO Proposal; or (ii) require material modifications to the marginal capacity accreditation design portion of the NYISO Proposal.)

¹³ See *Comments of Clean Energy Advocates*, Docket No. ER22-772-000 (Jan. 26, 2022) ("CEA Comments") at 86-98.

¹⁴ See, e.g., *Supporting Comments of Independent Power Producers of New York, Inc.*, Docket No. ER22-772-000 (Jan. 26, 2022) ("IPPNY Comments") at 6-7.

The NYISO Proposal, in its entirety, represents exactly what Chairman Glick and Commissioner Clements have urged regional grid operators that administer organized capacity markets to do.¹⁵ The NYISO has worked collaboratively with state entities and stakeholders to develop a broadly supported Section 205 filing that will resolve the tension between buyer-side mitigation and legitimate state clean energy priorities while continuing to protect Commission-jurisdictional markets from market power.

The Commission should not be swayed by parties whose ultimate concern is that the marginal capacity accreditation design might result in lower capacity revenues for certain renewable or storage resources in some near-term scenarios.¹⁶ The Commission should focus instead on the fact that marginal capacity accreditation will model the system as it is actually configured to support an efficient market that is in the long-term interest of all stakeholders, including renewables and storage.¹⁷ As the MMU has observed, it is impossible to have an efficient capacity market without accurately recognizing the actual reliability value of each class of installed capacity resources.¹⁸ As the MMU Comments further explain, “the proposed

¹⁵ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,081 (2021); Glick Comm’r Concurring (“I urge NYISO and its stakeholders to move expeditiously to replace these buyer-side market power mitigation rules with a model that moves beyond minimum offer price rules as a means of mediating the interaction between state policies and wholesale markets. In the event NYISO and its stakeholders cannot settle upon a replacement for its current buyer-side market power rules, then we will be left with little choice but to step in and establish such rules ourselves.”) ., 174 FERC ¶ 61,110 (2021); Clements Comm’r Concurring (“I look forward to engaging with my colleagues to work with the State of New York, NYISO, and the stakeholder community to re-examine the current capacity market construct to find a durable solution that yields just and reasonable rates for NYISO customers.”)

¹⁶ See CEA Comments at 87. The CEA Comments’ assertion that private investors should not expect to be indemnified against changing market and policy conditions, *see* CEA Comments at 36-37, is equally applicable to clean energy interests that might lose capacity revenues as a result of accreditation improvements that more accurately value their actual reliability contributions.

¹⁷ See January 5 Filing at 20-25.

¹⁸ See MMU Comments at 6-7. *See also* January 5 Filing at 17; May 25, 2021 Tech. Conf. Tr. in AD21-10-000 at 170, lines 1-10, Patton (“I will say one thing though that's very important is that for all technology types we have to accredit them based on their marginal value, their marginal contribution to reliability even though like for a lot of resources that we're talking about here their value goes down as the

changes to capacity accreditation will improve incentives to retire surplus capacity that is not needed for reliability and invest in capacity that complements policy-sponsored resources. This will reduce the chance that state-sponsored entry will lead to prolonged surpluses of overrated capacity that discourages entry of more valuable resources.”¹⁹

B. THE NYISO’S PROPOSED REVISIONS TO THE BSM RULES ARE JUST, REASONABLE, AND NOT UNDULY DISCRIMINATORY

There is unanimous support for the NYISO’s proposed revisions to the BSM Rules in this proceeding. There is also universal agreement, including by parties that have expressed concerns about the marginal accreditation design,²⁰ that the BSM Rules should be modified in time for the upcoming Class Year 2021 interconnection study process. Otherwise there is a risk that projects that support CLCPA objectives could be over-mitigated.²¹ All parties agree that this outcome must be avoided.²² Moreover, as the March 11 Response observed, 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” in Docket No. ER20-1718.²³

Some parties have offered justifications for the revisions to the BSM Rules that differ from the NYISO’s.²⁴ In particular, Sections II and III of the CEA Comments offers CEA’s own

penetration increases, but the market can’t perform efficiently unless we recognize what the next megawatt is going to give you in terms of reliability.”).

¹⁹ MMU Comments at 3.

²⁰ See, e.g., CEA Comments at 35-36.

²¹ See January 5 Filing at 13.

²² See, e.g., CEA Comments at 79.

²³ *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022). The Commission 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.

²⁴ In addition to CEA, the NYS Entities and Key Capture Energy offer rationales for revising the BSM Rules that the NYISO has not adopted. The existence of these comparatively minor differences are irrelevant to the Commission’s review of the January 5 Filing under FPA Section 205.

lengthy version of the history, purpose, and impacts of the BSM Rules. A number of CEA's statements, legal interpretations, and economic theories are incomplete, erroneous, or misleading. However, these errors are irrelevant for purposes of the Commission's review of the January 5 Filing under Section 205. CEA does not dispute that the NYISO's proposed revisions to the BSM Rules are just, reasonable, and not unduly discriminatory. The Commission can, and should, accept the NYISO Proposal as-filed. The NYISO therefore will not describe most of its disagreements with Sections II and III of the CEA Comments herein.²⁵

Only two of CEA's assertions regarding the BSM Rules warrant a specific response at this time. First CEA wrongly claims that there is no connection between the justness and reasonableness of the NYISO's proposed revisions to the BSM Rules and accreditation enhancements.²⁶ The January 5 Filing was very clear that marginal accreditation improvements are not only just and reasonable in their own right but also validate excluding resources that serve CLCPA goals from mitigation.²⁷

The independent MMU for the NYISO has made the same point. The MMU Comments reiterate that the NYISO's proposed accreditation changes are a necessary complement to its mitigation changes. Excluding CLCPA resources from mitigation alone "would be more likely to result in a chronic surplus of capacity that will undermine the market's ability to efficiently satisfy NYISO's resource adequacy needs."²⁸ Notably, four signatories to the CEA Comments

²⁵ The NYISO's silence on these points should not be construed as agreement with assertions made in Sections II or III of the CEA Comments.

²⁶ See CEA Comments at 49-52, 81-83.

²⁷ See January 5 Filing at 3-4.

²⁸ MMU Comments at 15; *see also id.* at 3.

previously argued, contrary to their position here, that capacity accreditation improvements helped to justify easing buyer-side capacity market power mitigation rules in PJM.²⁹

Second, CEA suggests that its arguments deserve greater credibility because they are supported by the Brattle Group (“Brattle”), which CEA notes was “routinely employed” in the past to advise NYISO on the economics of its markets”³⁰ However, Brattle has previously advised the NYISO that it would be feasible to achieve CLCPA mandates while using a marginal capacity accreditation framework.³¹ In addition, the NYISO never adopted the “Brattle Testimony” included as Exhibit A to the CEA Comments.³² The NYISO has never endorsed CEA’s Exhibit B, which is one of two analyses that Brattle submitted in the NYPSC’s *Proceeding on Motion of the Commission to Consider Resource Adequacy Matters*.³³ The

²⁹ Specifically, PJM’s July 30, 2021 filing to revise its “Minimum Offer Price Rule”(“MOPR”) argued that then-expected improvements to PJM’s capacity accreditation rules supported its proposed MOPR revisions. *See* PJM Interconnection, L.L.C., *Revisions to Application of Minimum Offer Price Rule*, Docket No. ER21-2582 at 19 (July 30, 2021) (“ELCC will tend to reduce the capacity value of intermittent resources as their penetration increases. That major effect of ELCC will in turn limit the capacity auction price impacts of intermittent resources, which means that the projected increase, as of 2018, of the auction impact of these resources was likely overstated.”) Four CEA members, *i.e.*, the Natural Resources Defense Council, the Sustainable FERC Project, Sierra Club, and Union of Concerned Scientists, supported PJM’s assertion. *See Comments of Natural Resources Defense Council, Sustainable FERC Project, Sierra Club, and Union of Concerned Scientists*, Docket No. ER21-2582 at (August 20, 2021) at 34 (“The declining and uncertain capacity value of renewable energy resources under PJM’s recently approved Effective Load Carrying Capacity (“ELCC”) rules further decreases the likelihood that renewable energy resources, in particular, could be successfully used to exercise buyer-side market power.”).

³⁰ CEA Comments at 29.

³¹ *See* Brattle Group, “New York’s Evolution to a Zero Emission Power System: Modeling Operations and Investment Through 2040 Including Alternative Scenarios,” June 22, 2020, available at <https://www.brattle.com/insights-events/publications/new-yorks-evolution-to-a-zero-emission-power-system-modeling-operations-and-investment-through-2040-including-alternative-scenarios/>.

³² *See Answer of the New York Independent System Operator, Inc.*, Docket No. EL21-7-000 (Nov. 18, 2020) (NYISO broadly aligned with CEA/Brattle on the response to the then-pending Cricket Valley complaint but, as with CEA Comments’ rationale for the BSM Revisions, never endorsed details of the CEA/Brattle analysis).

³³ NYPSC Case No. 19-E-0530.

NYISO informed the NYPSC that Exhibit B did “not provide a sufficient basis for concrete action by the [NYPSC] at this time.”³⁴ Similarly, the MMU recommended that “the [NYPSC] place little weight on the results of the Brattle Analyses in making its determinations in this proceeding.”³⁵ It is therefore misleading for CEA to imply that the NYISO Proposal is somehow inconsistent with testimony previously relied upon by the NYISO.

In short, the Commission should accept the January 5 Filing’s proposed revisions to the BSM Rules based on the arguments and substantial evidence presented by the NYISO without reference to inconsistent and unnecessary theories asserted by CEA.

C. THE NYISO’S PROPOSED MARGINAL CAPACITY ACCREDITATION DESIGN IS FULLY CONSISTENT WITH THE FILED RATE DOCTRINE AND THE “RULE OF REASON” POLICY

1. CEA Mischaracterizes the “Rule of Reason” Standard and its Application to Capacity Accreditation

CEA asserts that the marginal capacity accreditation design is “impermissibly vague and fails the filed rate doctrine and rule of reason.”³⁶ It asserts that the additional implementation details, technical specifications, and procedures that the NYISO intends to develop between now and the beginning of the Capability Year beginning on May 1, 2024 should be included in the Services Tariff. The Commission should reject these claims.

FPA Section 205(c)’s filing requirements potentially apply to any terms or practices that “affect” or “relate to” rates for Commission-jurisdictional service. But as the March 11 Response pointed out, the Commission’s long-established “rule of reason” policy recognizes that

³⁴ See *Comment of the New York Independent System Operator, Inc. on Materials Related to the July 10 Technical Conference*, NYSPC Case No. 19-E-0530 at 15 (Aug. 21, 2020).

³⁵ *Id.*

³⁶ CEA Comments at 3-4; see also *Motion to Intervene and Comments of Equinor Wind US LLC* (“Equinor Comments”), Docket No. ER22-772-000 (Jan. 26, 2022) at 6.

there are potentially an “infinite of practices affecting rates and service” and thus that utilities must file “only those practices that affect rates and service *significantly*, that are reasonably *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous”³⁷ In implementing the rule of reason, the Commission “balances the ‘real benefits’ of notice and full disclosure against any potential burden to the public utility of filing terms that do not so affect rates and services.”³⁸

Furthermore, the Commission has emphasized, particularly in the context of Independent System Operators and Regional Transmission Organizations (“ISOs/RTOs”) managing complex processes, that “it is not ‘appropriate to deprive utilities of the flexibility to manage their operations by introducing delay and layered decision-making.’”³⁹ The Commission has consistently recognized that the tariff “need not include every implementation detail to be just and reasonable.”⁴⁰ The “Commission has long understood that ‘study assumptions and parameters are likely to change over time as planners gain experience in implementing the new planning procedures. Thus, rigid specifications or formulas set out in the Tariff would likely lead to less reliable assessments due to the inability of planners to adapt to changing circumstances.’”⁴¹ For these reasons, technical specifications and other “implementation details need not be included in the tariff.”⁴² What matters is that tariffs contain enough specificity to give reasonable notice of the core features of the rules and procedures they establish.

³⁷ *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (emphasis in original).

³⁸ *ISO New England Inc.*, 154 FERC ¶ 61,008 at P 32 (citing *PacifiCorp*, 127 FERC ¶ 61,144 at P 11 (2009)).

³⁹ *Id.*

⁴⁰ *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134, at P 159 (2020).

⁴¹ *Id.* (quoting *Sw. Power Pool, Inc.*, 136 FERC ¶ 61,050, at P 37 (2011)).

⁴² *Hecate Energy Greene County 3 LLC v. N.Y. Indep. Sys. Operator, Inc.*, 177 FERC ¶ 61,121 at P 46 (2021).

CEA claims that these precedents are somehow not relevant to the NYISO's marginal accreditation design.⁴³ But the Commission expressly recognized that the rule of reason must allow for flexibility in the implementation of capacity accreditation rules when it addressed the PJM Interconnection, L.L.C.'s ("PJM") accreditation proposal.⁴⁴ The Commission's first PJM accreditation order cited several of the cases referenced above.⁴⁵ The Commission also found "that PJM's proposed formulaic ELCC methodology appears to largely strike the appropriate balance between providing sufficient detail in its Tariff, while leaving PJM and stakeholders with sufficient discretion to improve various implementation details over time as they gain experience with the ELCC methodology."⁴⁶ A similar balancing must be performed with respect to the NYISO Proposal.

The MMU Comments highlight why flexibility is especially justified in the context of a marginal accreditation proposal. Marginal capacity value "depends on (a) the timing of the system's hours of greatest need and (b) the factors that affect the physical availability of the resource in those hours. Marginal capacity value will therefore change as the needs of the system change."⁴⁷ Marginal capacity value "may change from year to year and is not locked in for a project's life."⁴⁸ Consequently, the precise techniques and procedures for calculating marginal capacity values are "not realistically susceptible to specification" at the level of detail

⁴³ See CEA Comments at 72-78.

⁴⁴ *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,084 at P 65 (2021) ("The Commission has previously determined that "study assumptions and parameters are likely to change over time as planners gain experience . . . [t]hus, rigid specifications or formulas set out in the Tariff would likely lead to less reliable assessments due to the inability of planners to adapt to changing circumstances.").

⁴⁵ See *id.* at n.111.

⁴⁶ *Id.* at P 65.

⁴⁷ MMU Comments at 8.

⁴⁸ *Id.*

demanded by CEA. It is sufficient for the Services Tariff to give notice that a marginal valuation approach will be used and to leave the specific technique along with other implementation details and technical specifications to other sources.

2. The January 5 Filing Describes the NYISO's Proposed Marginal Accreditation Methodology in a Level of Detail that Is Consistent with Commission Precedent

In its implementation of the rule of reason principles set forth above, the Commission has often accepted proposals by the NYISO and other ISOs/RTOs that included clear but high level descriptions of the methodology to be used to govern complex processes, while leaving implementation details to manuals or other documents. For example, the Services Tariff specifies that the NYISO will use its Security Constrained Unit Commitment and Real-Time Scheduling software to minimize as-bid production costs. But the details of the mathematical and software techniques employed to do so, *e.g.*, the use of the Mixed Integer Programming method to perform the optimization, is appropriately not addressed by the Services Tariff.

The mathematical details of the Effective Load Carrying Capacity ("ELCC") and Marginal Reliability Improvement ("MRI") MRI techniques are comparably technical and likewise do not belong in the Services Tariff. As the March 11 Response explained, the two approaches involve different calculation methods but "should produce similar or the same results regardless of the technique or methodology used."⁴⁹

The March 11 Response also explained that the level of detail included in the NYISO Proposal is comparable to other proposals that have been accepted by the Commission, including in contested cases, under which general rules were set forth in the Services Tariff but technical

⁴⁹ March 11 Response at 6.

details and mathematical techniques were specified elsewhere.⁵⁰ Illustrative precedents included proceedings addressing: (i) the NYISO’s “Alternative LCR” methodology,⁵¹ in which the NYISO changed its approach to establishing Locational Minimum Installed Capacity Requirements (“LCR”), which was at least as consequential to the capacity market as introducing marginal capacity accreditation, but only included high level-parameters of the new optimization algorithm in the Service Tariff; (ii) PJM’s proposed modifications to calculation of the energy and ancillary services revenue offset to be used in PJM’s capacity market;⁵² and (iii) ISO New England, Inc.’s (“ISO-NE”) revisions to its methodology for calculating Installed Capacity Requirements.⁵³ The NYISO adopts the March 11 Response’s more detailed discussion of these precedents and incorporates it by reference here.

3. CEA’s Reliance on *KeySpan-Ravenswood* Is Misplaced

CEA repeatedly points⁵⁴ to the D.C. Circuit’s 2007 decision in *KeySpan-Ravenswood, LLC v. FERC*,⁵⁵ to try to bolster its claims. But that case is readily distinguishable. *KeySpan-Ravenswood*, involved two separate but related tariff issues. First, although the NYISO Services

⁵⁰ *Id.* at 11-13.

⁵¹ See *N.Y. Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,011 at P 53 (2018) (rejecting arguments that NYISO improperly omitted material elements regarding the Alternative LCR Methodology from the Services Tariff); *order on reh’g*, 170 FERC ¶ 61,051 (2020).

⁵² See *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 (2020) at P 159 (finding that PJM’s responsibility was “to describe adequately the methodology for calculating the forward-looking [energy and ancillary services offset] in the Tariff” but that “[t]his need not include every implementation detail to be just and reasonable,” noting that “study assumptions and parameters are likely to change over time as planners gain experience in implementing the new planning procedures,” and emphasizing that “rigid specifications or formulas set out in the Tariff would likely lead to less reliable assessments due to the inability of planners to adapt to changing circumstances, . . .”); citing *Sw. Power Pool, Inc.*, 136 FERC ¶ 61,050 at P 37.

⁵³ *ISO New England Inc.*, 154 FERC ¶ 61,008 (2016).

⁵⁴ See CEA Comments at 74-76.

⁵⁵ 474 F.3d 804 (D.C. Cir. 2007).

Tariff set out a general methodology for converting ICAP to Unforced Capacity (“UCAP”) for suppliers (based on outages over a 12-month period), the tariff was silent as to the conversion methodology for Load-Serving Entities (“LSEs”). The Services Tariff stated only that the ICAP-to-UCAP conversion for LSEs would “be performed in accordance with ISO procedures.”⁵⁶ Second, the lack of any tariff detail at all regarding the ICAP-to-UCAP conversion for LSEs resulted in the use of differing conversion methodologies for suppliers and LSEs. The use of inconsistent conversion methodologies had the effect of lowering the amount of capacity procured by LSEs, and thus driving the Installed Reserve Margin below the minimum required level. The January 5 Filing presents no such problem.⁵⁷

The court’s primary focus was on this second tariff issue – *i.e.*, the reduction in the Installed Reserve Margin below the minimum required amount – and it held that the “NYISO may not adopt a method that causes it to violate its filed commitment to enforce NYSRC’s installed capacity requirements.”⁵⁸ The court also held that the lack of any detail regarding the conversion methodology for LSEs – what the court described as an “unelaborated reference to ‘ISO Procedures’” – constituted a violation of the rate filing requirement in Section 205(c).⁵⁹ But the January 5 Filing’s proposed tariff provisions accurately describe how the NYISO will administer the marginal accreditation design.

Consequently, the level of detail in the NYISO’s marginal accreditation tariff amendments is consistent with the Commission precedent. The proposed tariff provides

⁵⁶ *KeySpan-Ravenswood*, 474 F.3d at 807.

⁵⁷ *See id.* at 810 (“the use of different forced outage rates for generators and for LSEs effectively reduced the quantity of installed capacity purchased during the summer of 2002 from 35,960 MW to 34,189 MW”).

⁵⁸ *Id.*

⁵⁹ *Id.*

sufficient information to allow the Commission, customers and other stakeholders to understand the key elements of the revised accreditation methodology, and thus satisfies the notice requirement of the rule of reason and the filed rate doctrine. The proposed tariff amendments make it clear that capacity valuation will be based on Capacity Accreditation Factors, which would be set annually and on the marginal reliability contribution of the ICAP Suppliers within each Capacity Accreditation Resource Class toward meeting NYSRC resource adequacy requirements for the upcoming Capability Year.”⁶⁰ The proposed definition of Capacity Accreditation Factors gives sufficient notice of how those factors will be calculated.

4. The January 5 Filing Is Sufficiently Clear and Complete Concerning the Core Components of the Marginal Accreditation Design

a. “Marginal Reliability Contribution”

CEA repeatedly insists that the marginal accreditation design is insufficiently clear to give customers the required notice of how the NYISO intends to handle capacity accreditation.⁶¹ CEA focuses primarily on the fact that the NYISO has not proposed tariff language explaining the meaning of “marginal reliability contribution.”⁶²

In reality, however, it is clear both what marginal capacity accreditation entails and what constitutes a marginal reliability contribution. The NYISO will annually calculate capacity accreditation factors for all classes of ICAP Supply based upon the common industry practice of calculating the marginal contributions of resource classes to reliability. The March 11 Response explained that the meaning of “marginal reliability contribution” appears to be well understood

⁶⁰ See Services Tariff § 5.12.14.

⁶¹ See CEA Comments at 54-56.

⁶² See *id.*.

by most parties in this proceeding, including the MMU and IPPNY⁶³, as well as by the Commission itself.⁶⁴ The NYISO adopts March 11 Response’s discussion of these topics and incorporates it by reference herein.

CEA’s professed lack of understanding is further belied by the language of its own filing and by statements of its own experts.⁶⁵ The CEA Comments include clear descriptions of the “marginal,” “vintaged marginal,” “class average,” and adjusted class average approaches to accreditation. It also presents a table (Figure 8) taken from a presentation to NYISO stakeholders describing the relative advantage and disadvantages of “vintaged marginal,” “marginal,” and “adjusted class average” approaches. Additional details are set forth in CEA’s exhibits.⁶⁶

In addition, the Brattle Group (“Brattle”) developed a method to approximate the marginal UCAP value of wind, solar, and storage as more such resources are deployed as part of a 2020 study that it prepared for NYISO stakeholders.⁶⁷ Dr. Samuel Newell, whose testimony CEA relies on to support its argument that the BSM Rules be eliminated without accompanying capacity accreditation improvements, was part of the Brattle team that prepared this study. Brattle explained that representative marginal UCAP values were calculated by varying the

⁶³ See March 11 Response at 3-4.

⁶⁴ *Id.*

⁶⁵ See, e.g., MMU Answer at 6 (“The economic concept of marginal value is well known and there is existing literature on how marginal capacity accreditation differs from other accreditation approaches, including studies cited by CEA.”); see also *id.* at n. 6 (“For example, CEA includes appendices to studies by the consulting firms Astrape Consulting and Energy + Environmental Economics, both of which extensively discuss the concept of marginal ELCC as a particular methodology and include quantitative simulations of it.”).

⁶⁶ See CEA Comments, Exhibit D at 51.

⁶⁷ See Grid in Transition Report at 5 (presentation to NYISO stakeholders describing Brattle’s simulation of “the resources that can meet state policy objectives and energy needs through 2040, in order to inform separate inquiries into reliability and market design issues.”).

amount of capacity installed for each resource technology and holding all else equal, assessing the capacity value of the last MW added; and quantifying the relationship between penetration and marginal capacity value.⁶⁸ This is the basic approach that the NYISO would take under its proposed tariff. Brattle’s analysis demonstrated that the capacity value of wind, solar, and storage would decrease as their penetration increased.⁶⁹

In short, contrary to what CEA suggests, there is no need for the NYISO to explicitly define “Marginal Reliability Contribution” in the tariff, let alone for the NYISO to file elaborate rules for calculating it. As the March 11 Response stated, additional tariff detail on the meaning of “Marginal Reliability Contribution” is not required under the Commission’s rule of reason because “the core concept is broadly understood, the related implementation techniques are not reasonably susceptible to specification, and to the extent that they could be specified, including them in the tariff would unreasonably limit the NYISO’s flexibility in implementing a marginal capacity accreditation design.”⁷⁰

b. “Capacity Accreditation Resource Class”

CEA and Equinor both claim that the NYISO must provide more detail about how “Capacity Accreditation Resource Classes” will be defined in the Services Tariff.⁷¹ This argument is without merit and should be rejected.

The January 5 Filing provides a clear definition of “Capacity Accreditation Resource Classes” to mean resources “with similar technologies and/or operating characteristics which are expected to have similar marginal reliability contributions toward meeting NYSRC resource

⁶⁸ *Id.* at 109.

⁶⁹ *Id.* at 39.

⁷⁰ March 11 Response, Attachment I at 6.

⁷¹ *See* CEA Comments at 54-56; Equinor Comments at 4-5.

adequacy requirements for the upcoming Capability Year” subject to “the annual review detailed in Section 5.12.14.3.”

This definition gives market participants clear guidance on how the NYISO will determine a Capacity Accreditation Resource Class, while giving the NYISO sufficient flexibility to adjust its annual determinations of Capacity Accreditation Resource Classes to reflect evolving market conditions or future energy policy changes. Furthermore, the NYISO provided additional detail regarding this definition in the March 11 Response. The NYISO explained that it will “establish Capacity Accreditation Resource Classes for Resources and/or Aggregations with similar technologies and/or operating characteristics based on technology and operating characteristic criteria that are expected to influence marginal reliability contributions.” It also clarified that technology and operating criteria that could influence marginal reliability contributions “include dispatchability, intermittency profiles, energy duration limitations, fuel supply limitations, start-up notification limitations etc.” The NYISO explained that dispatchable resources likely would be included in classes separate from those for intermittent resources, and that differing intermittency profiles likely means that there will be “distinct classes for onshore wind, offshore wind, and solar resources.” Other characteristics that are likely to influence Capacity Accreditation Resource Class determinations include duration limitations for energy duration limited resources, dual-fuel status of certain thermal resources, and start-up time. As the NYISO has repeatedly explained,⁷² the final criteria will be decided upon through the NYISO’s planned Phase II process.

CEA attempts to support its claim by highlighting language in the first PJM ELCC order indicating that PJM should include defined ELCC classes in its tariff. However, that language

⁷² See, e.g., January 5 Filing at 44-45.

was not a directive but guidance in an order rejecting PJM’s original ELCC proposal on other grounds. Furthermore, that guidance was specific to PJM, and although PJM voluntarily followed that guidance in its second ELCC filing, such dicta is not a determination binding on NYISO. In fact, the NYISO’s and PJM’s approaches to accreditation are distinguishable in significant ways. For example, as the Commission has noted, PJM’s “ELCC Resources currently comprise less than five percent of installed capacity in the PJM region . . . ;”⁷³ whereas the NYISO’s marginal accreditation design would apply to all capacity resources. Moreover, under the NYISO Proposal, Capacity Accreditation Resource Classes would be established in accordance with the NYISO’s proposed tariff definition, based on a review of technologies, operating characteristics, and locations on the system in order to categorize resources with similar reliability contributions in the same class. The NYISO would not make use of the kind of administrative rules that are part of PJM’s process and that proved to be susceptible to specification in PJM’s tariff.⁷⁴ In short, it appears that having more detailed class definition rules is both more practicable and more necessary under PJM’s class average ELCC methodology than under the NYISO’s marginal methodology.

In sum, the definition of Capacity Accreditation Resource Class in the January 5 Filing is sufficiently detailed to allow market participants to understand when and how the NYISO will determine such classes. It is also sufficiently detailed to allow the NYISO to adjust its determinations to reflect evolving market conditions. For these reasons, the definition of Capacity Accreditation Resource Class is fully consistent with the Commission’s rule of reason,

⁷³ *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,084 at n. 89 (2021).

⁷⁴ See, e.g., *Comments and Motions of the Independent Market Monitor for PJM* at 6-7, PJM Interconnection, L.L.C., Docket No. ER21-278-001 (Mar. 22, 2021) (noting PJM’s need to employ administrative rules that PJM’s independent Market Monitor characterized as “ad hoc” and “arbitrary” under PJM’s class average based approach.)

and CEA's arguments to the contrary should be rejected.

5. The NYISO Is Not Seeking a “Blank Check” from Stakeholders or the Commission

CEA repeatedly claims that the January 5 Filing asks the Commission for a “blank check”⁷⁵ by seeking approval of the marginal accreditation design without sufficient stakeholder engagement and before all implementation details are complete. CEA's contentions are wrong. The January 5 Filing stated that the NYISO is committed to working closely with stakeholders to develop additional implementation details and specifications for the marginal accreditation design.⁷⁶ The Phase II effort is now well underway. The NYISO has begun stakeholder discussion to: (i) develop the implementation details and technical specifications for establishing Capacity Accreditation Factors and Capacity Accreditation Resource Classes; and (ii) propose necessary ICAP Manual revisions. The NYISO has also contracted with GE Energy Consulting to support its work.⁷⁷

Since there will be a robust stakeholder discussion in the Phase II process that will select the marginal accreditation study technique, *i.e.*, either ELCC or MRI⁷⁸ and other technical specifications, including the development of Capacity Resource Accreditation Classes,⁷⁹ there is

⁷⁵ See CEA Comments at 50, 76, 84, 90. See also CEA Comments at 24 (asserting that the development of capacity accreditation improvements “should not be rushed or undertaken without sufficient information and stakeholder engagement.”).

⁷⁶ See January 15 Filing at 43-44.

⁷⁷ See Improving Capacity Accreditation, NYISO Presentation at March 16, 2022 joint meeting of the ICAP Working Group and Market Issues Working Group, at 7 (“March 16 ICAP WG Presentation”) at <https://www.nyiso.com/documents/20142/29177064/Capacity%20Accreditation%2003-16-22%20v7.pdf/b26e6a99-5f4e-29cc-c60c-47608c78c983>.

⁷⁸ See March 11 Response, Attachment I at 6-8.

⁷⁹ See, *e.g.*, March 16 ICAP WG Presentation at 7.

no basis whatsoever for alleging an attempt to bypass stakeholder input or review.⁸⁰ The NYISO is not seeking any kind of “blank check” from the Commission. As discussed above, the key components of the marginal accreditation design are described in the NYISO’s proposed tariff language. Stakeholders will have sufficient notice of what they are. Moreover, any party may seek relief from the Commission by filing a complaint if it believes that the implementation details and technical specifications developed during Phase II, or to the results produced by the marginal accreditation design after it is in place, are unjust, unreasonable, or unduly discriminatory.

D. CEA HAS NOT SHOWN THAT THE NYISO’S PROPOSED MARGINAL ACCREDITATION DESIGN IS UNJUST, UNREASONABLE, OR UNDULY DISCRIMINATORY

CEA alleges that there are various flaws in the NYISO’s marginal accreditation design that render it unjust, unreasonable, or unduly discriminatory. As noted above, many of CEA’s objections go to secondary or tertiary implementation details that need not be addressed in the tariff. But CEA’s claims are also wrong on the merits. The NYISO is not attempting to address all of CEA’s arguments at this time but will instead focus on examples that are clearly based on mistakes or mischaracterizations or that are misleading.

⁸⁰ Furthermore, in compliance with Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 at P 1655 (2007); changes to the NYISO’s manuals must be approved by a 58% super-majority of NYISO stakeholders before becoming effective. See https://www.nyiso.com/documents/20142/2231383/nyiso_manual_posting.pdf/e71e2865-c79e-7e48-3ab4-1cec46a90d15.

1. The Marginal Capacity Accreditation Design Is a Just, Reasonable, and Not Unduly Discriminatory Approach for New York

CEA makes several arguments against the justness and reasonableness of the marginal capacity accreditation design. The MMU Answer has already refuted them. The NYISO endorses and adopts the MMU Answer on these points which are briefly summarized below.

First, CEA claims that the marginal accreditation design will “fail to reach accurate resource adequacy outcomes” because it will ostensibly undercount the total resource adequacy value of procured resources and thereby result in “missing MW.”⁸¹ The NYISO agrees with the MMU that “this is not a credible concern as it is based on a mistaken understanding of the NYISO’s planning process and the capacity market rules.”⁸² Marginal capacity accreditation will not result in over-procurement because the demand for UCAP in the NYISO market design is adjusted to account for the effects of marginal accreditation and other factors. The fact that marginal accreditation may reduce UCAP levels will not, as CEA claims, force the NYISO to over-procure capacity because the amount of UCAP required on the demand side will also be reduced by the average ratio of ICAP to UCAP for all suppliers.⁸³

Second, CEA argues that marginal accreditation will “systematically discriminate” against resources with declining marginal capacity values and that this will result resulting in

⁸¹ CEA Comments at 65-67.

⁸² MMU Answer at 7.

⁸³ *See id.* at 7-10. The MMU Answer noted that the ratio of UCAP to ICAP, not UCAP to “Adjusted ICAP” should be used when deriving UCAP requirements and that it might be appropriate to make future clarifying tariff changes to ensure that the distinction between ICAP and Adjusted ICAP remains clear. This concern has also been brought to the NYISO’s attention by stakeholders. The NYISO began stakeholder discussions of various Phase II implementation issues at the March 16 meeting of the Installed Capacity Working Group. The NYISO’s preliminary view is that there is at least one instance in its proposed tariff revisions where “Adjusted ICAP” should be replaced by a reference to “ICAP.” The NYISO will work with stakeholders to identify any such tariff issues, and will propose any necessary clarifications prior to the proposed effective date of the marginal capacity accreditation design.

distortions and unfairness.⁸⁴ The MMU Answer showed that these allegations are “misguided” because CEA “fails to recognize that the value of reliability services being provided by a resource is entirely based on its marginal contribution to reliability.”⁸⁵ The MMU goes on to fully describe how the proposed marginal capacity accreditation design is both fair and efficient and does not bias capacity auction results.⁸⁶ The NYISO adopts this explanation.

Third, CEA argues that marginal accreditation will jeopardize reliability because resources that receive lower marginal payments will lack incentives to perform when needed. The MMU Answer explains that this assertion is based on a mistaken assumption that the capacity market plays a major role in motivating resources to perform. In fact, energy and ancillary services prices currently play the primary role in providing efficient incentives for generators to be available and perform.⁸⁷

CEA is also mistaken when it asserts that UCAP is the measure of reliability in New York. In fact, ICAP is the measure of resources’ maximum capability to produce MW-hrs and this ability to call on ICAP Supply to produce energy (MW-hrs) at the time of peak demand is what ensures reliability. Many of the CLCPA resources that have intermittent, non-dispatchable capability, as well as dispatchable resources that have energy duration limitations need to have their measure of ICAP reduced to reflect what can be expected to be available throughout the duration of a peak demand period. Marginal accreditation studies will calculate this for all resource classes. The NYISO’s Capacity Accreditation Factors will be used to calculate the

⁸⁴ CEA Comments at 67-69.

⁸⁵ MMU Answer at 12-13.

⁸⁶ *See id.* at 12-16.

⁸⁷ *See id.* at 11-12.

Adjusted ICAP value for all resource types. This will then be further modified to calculate UCAP for all resources based upon individual unit derates and forced outage data.

Finally, CEA is wrong to suggest that the length of the NYISO's phased implementation plan for marginal accreditation indicates that it is unnecessary to move forward with accreditation improvements now.⁸⁸ The January 5 Filing was clear that timely Commission action was needed on accreditation, "so that: (i) the NYISO can move forward with the work that needs to be completed for Phases [II] and [III] of the marginal accreditation design; and (ii) market participants and investors will have as much certainty as possible, as soon as possible, regarding the capacity market rules in New York."⁸⁹ The MMU Comments likewise explained that, "[i]f the Commission determines that the principles and framework in NYISO's proposal constitute a reasonable approach, there is value in approving them now because it will provide essential information to investors and asset owners."⁹⁰ Accordingly, CEA's attempt to delay action on the marginal accreditation design should be rejected because it will cause affirmative harm to the NYISO-administered capacity market and to stakeholders.

2. CEA Is Wrong to Claim that the Analyses Supporting the Marginal Accreditation Design Were "Limited" or Otherwise Insufficient Under Section 205

CEA alleges that the analyses supporting the marginal accreditation design were "limited" and "flawed."⁹¹ It complains that the analyses should have used more intensive

⁸⁸ See CEA Comments at 4.

⁸⁹ January 5 Filing at 50-51.

⁹⁰ MMU Comments at 15.

⁹¹ CEA Comments at 69.

probabilistic modeling, such as General Electric’s Multi-Area Reliability Simulation (“GE MARS”) tool, among other supposed defects.⁹²

The marginal capacity accreditation design was supported in substantial part by quantitative studies conducted by the MMU. The MMU Answer refutes CEA’s claims that the MMU’s analysis was in any way insufficient. In particular, the MMU emphasized that its use of simplifying assumptions and modeling techniques was conceptually sound and practically justified. Using GE MARS would not have been feasible in combination with the MMU’s iterative capacity expansion model because of the required computation times.⁹³ The key thing is that the MMU “demonstrated that marginal accreditation provides more efficient incentives for investment than alternative approaches, even when resources receive substantial revenues from state programs.”⁹⁴ The MMU might have changed or added details to its model but that would not have changed the MMU’s fundamental conclusion.⁹⁵

Much of CEA’s criticism of the MMU’s analysis is that it did not attempt to predict specific capacity accreditation values or consumer costs. CEA is trying to hold the MMU, and thus the NYISO, to a standard of proof far beyond what Section 205 requires. The Commission has routinely relied on economic theory, and reasonable factual predictions derived from economic theory, when finding proposed tariff revisions to be just and reasonable.⁹⁶ Section 205

⁹² CEA Comments at 69-72, citing Telos Energy Report at 10-18.

⁹³ MMU Answer at 17.

⁹⁴ *Id.* at 18.

⁹⁵ *Id.*

⁹⁶ See *Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 109 (2d Cir. 2015) (“The D.C. Circuit has held that FERC may permissibly rely on economic theory alone to support its conclusions so long as it has applied the relevant economic principles in a reasonable manner and adequately explained its reasoning.”) (listing cases); accord, e.g., *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 65 (D.C. Cir. 2014) (listing cases); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C. Cir. 2010) (stating that the Commission may make findings “based on ‘generic factual predictions’ derived from economic

does not require the NYISO to perform comprehensive simulations of all conceivable future market scenarios or to predict exact capacity accreditation results for particular circumstances.⁹⁷

It is more than sufficient that the NYISO, with the MMU's support, submitted a quantitative analysis and made a reasonable showing that the advantages of marginal accreditation would materially outweigh its disadvantages.

CEA's demands that the NYISO conduct further analyses, evaluate additional scenarios, or conduct more computationally intense simulations effectively seek to force the NYISO to prove in advance that its marginal capacity accreditation design is superior to alternative proposals that might be devised. But that is not what Section 205 requires. The NYISO need not show that its proposal is the best possible rule change that might be adopted. It need only present substantial evidence showing that the marginal accreditation design is just, reasonable, and not unduly discriminatory. Taken together, with the Hibbard/Wu Affidavit, the AGI Study, the Mukerji Affidavit, and the NYISO's own Consumer Impact Analysis (as further buttressed by other pleadings and testimony in this proceeding), the MMU's analysis fully satisfies the Section 205 standard.

3. There Is No Inconsistency Between the NYISO Proposal and the NYISO's Supporting Testimony and No Deficiencies in the NYISO Testimony

CEA alleges that, "[t]he Analysis Group ("AGI") study provided as Attachment III-A to NYISO's filing departs in potentially significant ways from the accreditation approach as

research and theory"); *see also, e.g., PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000, Statement of Chairman Glick and Commissioner Clements at P 53 & n.106 (Oct. 19, 2021).

⁹⁷ *See Colo. Interstate Gas Co. v. Fed. Power Comm'n*, 324 U.S. 581, 589 (1945) ("Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) ("[W]e have never required a ratemaking agency to allocate costs with exacting precision. . . . It is enough, given the standard of review under the APA, that the cost allocation mechanism not be "arbitrary or capricious" in light of the burdens imposed or benefits received.") (citation omitted).

described by NYISO in this filing. AGI’s analysis does not reflect the actual capacity accreditation methodology that NYISO will implement in two years.”⁹⁸ CEA’s characterization of the AGI Study is both misleading and irrelevant. The AGI Study did not purport to model the fully developed, final version of a marginal capacity accreditation design inclusive of all implementation techniques and details. Instead it “modeled the future operation of the NYISO capacity market under conditions consistent with NYISO’s implementation of its proposed changes to the BSM rules and capacity accreditation paradigm”⁹⁹ AGI’s approach was necessary given that implementation techniques and details are only now being developed through the Phase II stakeholder process. It was also practical given the computational difficulties (noted above) of modeling capacity market outcomes. Moreover, AGI’s approach is a reasonable quantitative analysis rooted in accepted economic theory which shows that a marginal accreditation methodology would allow the NYISO to narrow the application of the BSM Rules while maintaining competitive market outcomes. There is thus no “inconsistency” between the AGI Study and the NYISO Proposal.

There is likewise no inconsistency between the AGI Study and the Affidavit of Rana Mukerji (Attachment IV to the January 5 Filing). CEA claims that there is a “conflict” between certain reasonable simplifying assumptions made in the AGI Study and a single observation by Mr. Mukerji. Specifically, Mr. Mukerji described an issue with the NYISO’s existing capacity accreditation approach that was first identified by the MMU. Mr. Mukerji noted that “the forced outage rates that are used to determine capacity credit do not necessarily align with, or produce

⁹⁸ CEA Comments at 50.

⁹⁹ January 5 Filing, Attachment III-A at P 9.

credit values that accurately reflect, a Resource's true marginal value for resource adequacy.”¹⁰⁰

He then quoted the 2020 State of the Market Report's statement that under current NYISO rules:

the UCAP rating of some existing resources is overvalued. Since the capacity planning requirements are based on models that do not consider the reduced availability of long lead time units, it results in the appearance of surplus capacity which reduces incentives for new investment when it is needed and leads to the retention of older units that provide little or no value. Current accreditation methods will become more outdated and inaccurate as the entry of intermittent and duration-limited resources makes reliability planning more complex.¹⁰¹

According to CEA, these statements are somehow inconsistent with the AGI Study assigning renewable or storage resources of a given type the same marginal capacity value based on system-wide penetration of that resource type and assigning existing conventional resources UCAP values based on NERC historical EFORD values rather than on marginal reliability accreditation.¹⁰² CEA is once again attempting to manufacture controversy when none exists. The AGI Study was using reasonable approximations of forward-looking accreditations that were reasonable and practical for purposes of its analysis. The AGI Study's assumptions also correctly reflected the expected marginal value of the majority of non-intermittent and non-storage units, since the valuations such resources receive under existing accreditation rules are not in question. Mr. Mukerji was referring to a narrow set of units such as long lead time units where the forced outage rate does not directly align with marginal values. There is no tension, and certainly no conflict, between the AGI Study and the Mukerji Affidavit.

Finally, CEA repeatedly makes inaccurate and misleading assertions that a “NYISO expert” supports CEA's positions. CEA states that “NYISO's own experts noted the problematic

¹⁰⁰ January 5 Filing, Attachment IV at P 52.

¹⁰¹ *Id.* at P 52 & n.7 (quoting 2020 State of the Market Report at 57).

¹⁰² *See* CEA Comments at 51.

tradeoffs in choosing a marginal ELCC methodology . . . ,”¹⁰³ that the NYISO’s “own experts” support more detailed accreditation tariff provisions,¹⁰⁴ and that “NYISO’s own experts” agree with certain of Astrapé’s assertions.¹⁰⁵ In each of these instances, CEA is referring to a presentation that the NYISO invited Energy + Environmental Economics (“E3”) to make to the NYISO’s stakeholder Installed Capacity Working Group on August 30, 2021.¹⁰⁶ The purpose of the E3 presentation was to further educate stakeholders about the differences between marginal and average accreditation models. The NYISO never endorsed any recommendations by E3, the NYISO did not ask E3 to support the January 5 Filing, and the NYISO is not otherwise relying on E3 in this proceeding.¹⁰⁷ It is disingenuous for CEA to try to attribute E3’s views to the NYISO and to imply that the NYISO’s position are somehow contradicted by NYISO experts.

4. The NYISO Recognizes PEAK Coalition’s Environmental Justice Concerns But It Is Beyond the Scope of an FPA Section 205 Proceeding and Premature to Address them Here

The PEAK Coalition expresses concern that NYISO’s marginal accreditation design might have negative impacts on environmental justice communities that could contravene the CLCPA.¹⁰⁸ The NYISO recognizes the importance of environmental justice to both New York State and to the Commission. Marginal accreditation is not inconsistent with the CLCPA or its environmental justice objectives. Marginal accreditation will provide an important mechanism

¹⁰³ CEA Comments at 59.

¹⁰⁴ *Id.* at 62.

¹⁰⁵ *See id.* at 98.

¹⁰⁶ That presentation is attached to CEA’s pleading as Exhibit D.

¹⁰⁷ It is likewise misleading for CEA to cite E3’s discussion of one potential disadvantage of marginal accreditation without acknowledging that E3 was comparing multiple relative strengths and weaknesses of the average and marginal methodologies.

¹⁰⁸ *See* PEAK Coalition at 1.

in the wholesale markets to incent new resource entry aligned with reliability needs, which is a key CLCPA objective.

At the same time, the CLCPA’s environmental justice requirements will be developed and enforced by New York State over the next several years. They are not Commission-jurisdictional. Moreover, it is not feasible to anticipate how future state-jurisdictional CLCPA requirements may interact with the marginal capacity accreditation design, or with any alternative approach. In short, PEAK Coalition’s concerns should be addressed by New York State agencies working to implement the CLCPA, not by the Commission, in this FPA Section 205 proceeding.

E. THE NYISO’S MARGINAL ACCREDITATION DESIGN WAS THE PRODUCT OF A FAIR AND THOROUGH STAKEHOLDER PROCESS

CEA falsely suggests that the NYISO’s stakeholder process was “rushed” and resulted in stakeholders making “hasty” decisions regarding capacity accreditation.¹⁰⁹ CEA implies that the overwhelming stakeholder vote in support of the January 5 Filing, including the marginal accreditation proposal, was somehow illegitimate or procured in bad faith, in part because certain stakeholders abstained from voting.¹¹⁰ CEA asserts that “many” stakeholders initially opposed including the marginal accreditation design in the January 5 Filing¹¹¹ and that the action on accreditation issues should have been delayed.¹¹² CEA goes so far as to suggest that the Commission should reject marginal accreditation in the name of protecting “good governance” and signaling that the “use of political might over right does not produce just and reasonable

¹⁰⁹ See CEA Comments at 78-81, *see also* NYC Comments at 6 & n.14 (claiming that the stakeholder process was “unnecessarily rushed”).

¹¹⁰ See CEA Comments at 81.

¹¹¹ *Id.* at 84.

¹¹² See *id.* at 81.

rates. . . .”¹¹³ It even warns that the alleged failures of the stakeholder process threatens to undermine the legal durability of the entire NYISO Proposal.¹¹⁴

These are gross misrepresentations of how the NYISO’s shared governance process addressed the development of the January 5 Filing. Simply stated, the stakeholder process performed exactly as intended and as required by Commission-approved governance rules. The NYISO successfully worked through its stakeholder process to produce a broadly supported Section 205 proposal that resolved extremely complex, long controversial issues and reconciled conflicting stakeholder interests. Indeed, the MMU previously informed the Commission that it did not believe it would be possible for ISO/RTO stakeholder processes to voluntarily adopt marginal capacity accreditation designs given the magnitude of the economic interests involved.¹¹⁵ Yet the NYISO’s shared governance process met this challenge.

All of CEA’s claims are ultimately belied by the fact NYISO stakeholders overwhelmingly supported the NYISO Proposal. Whatever initial misgiving some stakeholders might have had about including marginal accreditation in the NYISO Proposal did not prevent a large super-majority of all stakeholders from concluding that the NYISO Proposal should be adopted. CEA’s complaints about “political might” are nothing more than grievance about being on the losing side of an overwhelming vote approving the NYISO Proposal. CEA’s quibbling about the impact of abstentions is greatly overstated. Some CEA members voted against the NYISO Proposal and the voting share of those that actually abstained amounted to less than five percent of the total vote.

¹¹³ See CEA Comments at 92.

¹¹⁴ See *id.*.

¹¹⁵ See *Modernizing Electricity Market Design*, Docket No. AD21-10-000, Transcript of May 25, 2001 Technical Conference at 145 (observing that getting good accreditation designs through ISO/RTO stakeholder processes could be impossible unless the Commission directed ISOs/RTOs to adopt them.)

It also bears emphasis that the NYISO's shared governance system includes well-known and long-established protections for minority viewpoints. If CEA members believed that the process was unduly rushed then they could have moved to table it. They did not. CEA's members also declined to exercise their right to appeal the stakeholder approval of the marginal capacity accreditation design to the NYISO's independent Board of Directors. Appeals to the Board are a significant and well understood component of the NYISO's shared governance process serving as an important check against actual abuses of "political might." The NYISO has robust rules¹¹⁶ that ensure that the views of minority voting interests can be heard, considered, and acted upon by the independent Board.

Moreover, the January 5 Filing and various filed comments describe how open, extensive, responsive to input, and complete the NYISO stakeholder process that preceded the adoption of the NYISO Proposal truly was.¹¹⁷ It defies credulity to suggest that a stakeholder process that featured almost twenty stakeholder meetings over a seven month period was "hasty" or "rushed." The MMU recommended that the NYISO adopt a marginal capacity accreditation design in its 2020 *State of the Market Report*. The NYISO proposed filing under Section 205 to do so, and the MMU and the NYISO presented analyses demonstrating that the marginal accreditation would be just, reasonable, and not unduly discriminatory. The vast majority of stakeholders agreed. The fact that the NYISO, MMU, and most stakeholders thought it unnecessary to conduct the additional analyses that CEA desired, and the fact that the NYISO declined to indefinitely delay action on accreditation as CEA would have preferred, does not mean that the stakeholder process was flawed.

¹¹⁶ See https://www.nyiso.com/documents/20142/1390241/procedural_rules_for_appeals_board.pdf.

¹¹⁷ See January 5 Filing at 49-50.

CEA's attacks on the stakeholder process are especially unjustified given the inclusion of material in the CEA Comments that appears to have been prepared for stakeholder discussions only to be withheld from the shared governance process and saved for use in this proceeding. As noted above, Exhibit C to the CEA Comments is a document entitled "Review of the NYISO Capacity Accreditation Reforms." It was prepared by Telos Energy on behalf of Enel X. Enel North America is a signatory to the CEA Comments. The Telos Energy review is dated November 12, 2021 and clearly indicates that it was prepared before the NYISO stakeholder process was complete.¹¹⁸ During the stakeholder process, Enel X asked to make a presentation that would set forth its views on alleged flaws in marginal accreditation designs prior to the stakeholder vote, but ultimately decided not to proceed. Exhibit C to the CEA Comments clearly appears to be a version of what Enel-X originally intended to present in the stakeholder process. It is hypocritical for CEA to complain that the NYISO allegedly failed to consider its concerns when one of its members opted not to share them. Decades of Commission precedent directs stakeholders not to engage in such tactics. Stakeholders are expected to participate fully and in good faith in stakeholder processes, not attempt "end runs" around them.¹¹⁹ The Commission has

¹¹⁸ See, e.g., CEA Comments Exh. C, Telos Report at 6 ("At this juncture, the NYISO has advanced substantially through Phase 1 and is currently pursuing the approval of the Management Committee for their proposal.").

¹¹⁹ See, e.g., *See, e.g., ISO New England Inc.*, 130 FERC ¶ 61,145, at P 34 (2010) ("we encourage parties to participate in the stakeholder process if they seek to change the market rules..."); *ISO New England Inc.*, 125 FERC ¶ 61,154 at P 39 (2008) (directing that unresolved issues be addressed through the stakeholder process); *ISO New England*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party's specific request for relief because the Commission "will not ... circumvent that stakeholder process"); *New York Independent System Operator, Inc., New York Transmission Owners*, 126 FERC ¶ 61,046, at PP 53-54 (2009) (directing that a proposal be "presented to and discussed among ... stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission"); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants").

invoked “exhaustion of remedies” principles when denying relief to parties that failed to utilize stakeholder processes.¹²⁰ The Commission should follow those precedents here.

Finally, CEA is wrong to suggest that accepting the marginal capacity accreditation design would somehow be a greater threat to the legal durability of the NYISO Proposal than rejecting marginal accreditation. Attempting to substantially change the NYISO Proposal, especially given the widespread support it enjoys and the limits of the Commission’s authority to modify or condition Section 205 filings, would invite major legal challenges.¹²¹ By contrast, an Article III court would be unlikely to second-guess a Commission order accepting marginal capacity accreditation especially given the technical nature of the matter and the strong record support for the NYISO Proposal in this proceeding.

F. THE NYISO’S PROPOSED CAPACITY REFERENCE PRICE POINT TRANSLATION ENHANCEMENTS ARE JUST, REASONABLE, AND NOT UNDULY DISCRIMINATORY

The January 5 Filing proposed to modify existing tariff rules governing the ICAP to UCAP translation that is done for the peaking plant used to set the ICAP Reference Price for the ICAP Demand Curves in each quadrennial reset.¹²² No party opposed the NYISO’s proposed changes enhancements in this area.

The January 5 Filing also noted that CLCPA mandates, coupled with tariff changes made by the NYISO Proposal would “impact the risks facing the proxy peaking plant used to define

¹²⁰ See, e.g., *Niagara Mohawk Power Corp. v. N.Y. State Reliability Council and N.Y. Indep. Sys. Operator, Inc.*, 114 FERC ¶ 61,098 (2006) (dismissing a complaint as “not yet ready for Commission consideration” when the complainant failed to “exhaust its remedies” by first working through stakeholder processes.).

¹²¹ See *supra* n. 12.

¹²² See January 5 Filing at 5, 40-41.

ICAP Demand Curves.”¹²³ But the NYISO informed the Commission that no tariff changes were necessary to address these risks because the Services Tariff already requires the NYISO and its independent consultant to account for them when estimating the costs of future proxy peaking plants.

NYC disputes that the CLCPA mandates will create additional investment risks and speculates that the NYISO may seek to improperly influence the independent consultant to overstate them in the next quadrennial ICAP Demand Curve reset.¹²⁴ It asks the Commission to “direct the NYISO to refrain from providing any directives, instructions, recommendations, or suggestions to the independent consultant regarding how it evaluates investment risk.”¹²⁵

There is no basis for NYC’s concerns and the Commission should deny its request. The January 5 Filing was perfectly clear that the NYISO was not proposing any change to the ICAP Demand Curve reset process. The NYISO simply informed the Commission that it expected the independent consultant to account for any changing investment risks associated with the CLCPA just as it would do for any relevant future change. There is no reason to believe that the NYISO would seek to “taint” the consultant.

G. THE COMMISSION SHOULD DENY CEA’S REQUESTED RELIEF

CEA argues that the Commission should accept the NYISO’s proposed revisions to the BSM Rules but not the marginal accreditation design. In the alternative, CEA suggests that the Commission should accept the revisions to the BSM Rules in whole and either: (a) initiate a

¹²³ *Id.* at 41.

¹²⁴ *See* NYC Comments at 8.

¹²⁵ *Id.* at 11.

deficiency letter or paper hearing process with respect to accreditation; or (b) approve the marginal accreditation proposal “subject to further Section 205 filings.”¹²⁶

For the reasons set forth above, none of these actions is remotely justified. The NYISO has demonstrated that the January 5 Filing is just, reasonable, and not unduly discriminatory. There is universal support for implementing the BSM Revisions in advance of the Class Year 2021 interconnection study process. There are valid substantive reasons, along with widespread stakeholder support, for moving forward with the marginal accreditation design now. Attempting to modify the January 5 Filing in the ways that CEA suggests would lead to disruptive legal challenges. Holding a paper hearing to review the accreditation implementation details is unnecessary because such details do not belong in the Services Tariff in the first place. It would also be unproductive given how long the NYISO expects the development of technical specifications and implementation details to take to complete. The Commission also lacks authority to direct utilities to make filings under Section 205.¹²⁷ Moreover, the NYISO cannot make Section 205 filings in the first place without super-majority stakeholder support.¹²⁸ The Commission should also reject CEA’s proposed “guidance” concerning additional accreditation-related provisions that might be added to the Services Tariff.¹²⁹ As noted above, the marginal accreditation design revisions proposed in the January 5 Filing are sufficiently complete and detailed to satisfy the rule of reason and filed rate doctrine. What CEA depicts as necessary tariff elements for an accreditation methodology are in fact implementation details and

¹²⁶ See CEA Comments at 5.

¹²⁷ See, e.g., *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002).

¹²⁸ See, e.g., January 15 Letter at 50 (“Although certain stakeholders might have preferred that the NYISO take a different approach, the NYISO is only authorized to file the NYISO Proposal as it was accepted by the Board and Management Committee.”).

¹²⁹ See CEA Comments at 93-94.

technical specifications. They are not required to be included in Services Tariff and should not be so that the NYISO will have the flexibility that it needs to administer the complex accreditation process.

III. CONCLUSION

In conclusion, the Commission should accept this answer, dismiss the objections raised by certain commenters in this proceeding, accept the NYISO Proposal without modifications/conditions or additional process, and make the NYISO's proposed tariff revisions, as re-submitted in the March 11 Response, effective on May 11, 2022.

Respectfully Submitted,

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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 16th day of March 2022.

/s/ Mitchell W. Lucas

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