

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

New York Independent System Operator, Inc.))	Docket Nos. ER22-772-000, ER22-772-001
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**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 the pleadings filed on April 1, 2022, by the Natural Resources Defense Council (“NRDC”)² and the New York State Public Service Commission and New York State Energy Research and Development Authority (together the “NYPSC”)³ (collectively the “April 1 Filings”). As the NYISO has previously emphasized, its January 2022 filing (“January 5 Filing”)⁴ in this docket

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 Natural Resources Defense Council, *Comments of Natural Resources Defense Council on NYISO’s Response to Deficiency Letter and Motion for Leave to Respond to Answers and Response*, Docket Nos. ER22-772-000 and -001 (Apr. 1, 2022) (“NRDC Comments”).

³ New York State Public Service Commission and New York State Energy Research and Development Authority, *Comments of the New York State Public Service Commission and New York State Energy Research and Development Authority*, Docket No. ER22-772-000 (April 1, 2022) (“NYPSC Comments”).

⁴ 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). 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 Curves⁴ to better reflect a rapidly changing resource mix (the “NYISO Proposal”). On March 11, the NYISO’s nominally amended the January 5 Filing by making two non-substantive corrections and by requesting an updated effective date. *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”).

was just, reasonable, not unduly discriminatory, and enjoyed overwhelming stakeholder support. The NYISO is pleased that the April 1 Filings have further narrowed the already limited differences between parties in this proceeding. As discussed herein, there is now an even clearer path for the Commission to follow towards accepting the January 5 Filing.

Specifically, the NYISO: (i) welcomes NRDC's recognition that the proposed marginal capacity accreditation design is conceptually appropriate for New York; (ii) can readily make the clarification to the tariff language that is still of concern to NRDC; and (iii) does not oppose making the future compliance filing requested by the NYPSC to provide additional details regarding tariff provisions that are key determinants of capacity market outcomes.

The fact that the NYISO is not seeking to respond further to the most recent pleadings by Equinor Wind US LLC⁵ or the remaining Clean Energy Advocates ("CEAs")⁶ should not be construed as agreement with them. Those filings simply rehash claims about supposed flaws in the marginal capacity accreditation design, continue to wrongly insist that there is no connection between the BSM Rules and capacity accreditation, and repeat vague allegations of unfairness in the stakeholder process. The NYISO and other parties have already refuted these claims in detail and there is no need to address them further here.

⁵ See Equinor Wind US LLC, *Comments, Motion for Leave to Answer, Answer of Equinor Wind US, LLC*, ER22-772-000 and -001 (April 1, 2022).

⁶ See *Comments, Motion for Leave to Answer, and Answer of the American Clean Power Association, Sierra Club, Borrego Solar, ENEL North America, Cypress Creek Renewables, Centrica Business Solutions, and Voltus, Inc.*, Docket Nos. ER22-772-000 and -001 (April 1, 2022) ("ACPA Answer"). Seven of the eleven signatories to the January 26, 2022, *Comments of Clean Energy Advocates* are signatories to the ACPA Answer. As discussed below, NRDC is now taking a different position on the NYISO's proposed marginal accreditation design. The three other original CEA signatories did not sign the ACPA Answer.

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.⁷ The NYISO may therefore respond to the NYPSC's comments, and the portions of NRDC's pleading that comment on the NYISO's March 11 Response.

The Commission also has discretion to accept responses to answers and has routinely done so when a response would: (1) lead to a more complete and accurate record; (2) help the Commission better understand the issues; (3) clarify matters in dispute or errors; or (4) provide information that will assist the Commission in rendering a decision.⁸ To the extent the Commission deems necessary it should allow the NYISO to respond to the portions of NRDC's filing that constitute an answer. Allowing the NYISO to respond will ensure that the Commission's decision in this proceeding is based on a complete and accurate record.

II. ANSWER

A. THE NYISO HAS NOT "CONCEDED" THAT THERE WERE ANY "DEFECTS" IN THE JANUARY 5 FILING BUT HAS NO OBJECTION TO NRDC'S PROPOSAL THAT THE TARIFF LANGUAGE ADDRESSING THE TRANSLATION OF INSTALLED CAPACITY REQUIREMENTS TO UNFORCED CAPACITY REQUIREMENTS BE ADDRESSED

NRDC originally joined in the CEA comments objecting to the January 5 Filing's marginal capacity accreditation design. However, after reviewing the March 11 Response and several other filings, NRDC now provisionally states that "the NYISO's conceptual approach to use marginal accreditation is an acceptable approach in light of the unique peculiarities of the

⁷ 18 C.F.R. § 385.213(a)(2) & (3).

⁸ See, e.g., *New York Independent System Operator Inc.*, 133 FERC ¶ 61,178 at P 11 (2011) (allowing answers to answers and protests "because they have provided information that have assisted [the Commission] in [its] decision-making process"); *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).

NYISO's single-state market context and prompt capacity market design.”⁹ NRDC's openness to marginal accreditation in New York¹⁰ is conditioned on the NYISO clarifying tariff language regarding the translation of Installed Capacity (“ICAP”) requirements to Unforced Capacity (“UCAP”) values as contained in Sections 5.10 and 5.11 of the Services Tariff.

The NYISO appreciates that NRDC changed its position in light of the clear record evidence that marginal capacity accreditation will not have the negative impacts that the CEA feared. To be clear, the NYISO has never conceded that there was a “defect” in the tariff language for marginal accreditation that NRDC has identified, let alone a “material defect.”¹¹ The language requiring the translation of ICAP requirements established by the Installed Reserve Margin and the Locational Minimum Installed Capacity Requirements to UCAP requirements currently uses a ratio of total UCAP to the total “Adjusted ICAP.”¹² Under the capacity accreditation approach proposed in the January 5 Filing, the term “Adjusted Installed Capacity” found in Sections 5.10 and 5.11 of the Services Tariff is no longer necessary. It is possible that continuing to use “Adjusted Installed Capacity” in translations could result in

⁹ NRDC Comments at 2.

¹⁰ The NYISO takes no position at this time on NRDC's statements that marginal capacity accreditation would be inappropriate for other regions. That question is beyond the scope of this Section 205 proceeding which is concerned solely with whether the NYISO's specific marginal capacity accreditation proposal satisfies the standards of Section 205 of the Federal Power Act (“FPA”).

¹¹ NRDC Comments at 1.

¹² The “Adjusted Installed Capacity” term was added to the Services Tariff when the NYISO submitted its DER participation model; and at that time, it was added to address issues with the calculation of UCAP requirements that were associated with a relatively small penetration of duration limited resources that would be subject to energy duration adjustment factors. *See* New York Independent System Operator, Inc., *Proposed Tariff Revisions Regarding Establishment of Participation Model for Aggregations of Resources, Including Distributed Energy Resources, and Proposed Effective Dates*; Docket No. ER19-2276-000 at 78, 84 (June 27, 2019).

unnecessarily high UCAP requirements in future scenarios involving high penetrations of state-supported clean energy resources with low Capacity Accreditation Factors.¹³

The NYISO has agreed that this language should be updated so that the term “Adjusted Installed Capacity” is replaced with “Installed Capacity.”¹⁴ This issue, however, is not caused by the NYISO’s proposal to adopt a marginal capacity accreditation design instead of an alternative, such as an average accreditation design. Therefore, this issue is not a material defect of the marginal accreditation proposal. The existing language has not caused any issues in the past. Nevertheless, it would be appropriate to replace “Adjusted Installed Capacity” starting with the Capability Year that begins May 1, 2024, when marginal capacity accreditation is implemented to avoid any risk of unnecessarily high UCAP requirements under the new accreditation framework. The NYISO is, therefore, open to clarifying the tariff in a compliance filing to avoid any potential unintended consequences.

As NRDC and others have noted, a relatively simple and straightforward tariff change could fully resolve any concerns on this point. Namely, the ICAP to UCAP calculation for translating the NYCA ICAP requirement under Section 5.10 of the Services Tariff, and for translating Locality ICAP requirements under Section 5.11, should use total ICAP instead of

¹³ Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff (as revised by the January 5 Filing).

¹⁴ See New York Independent System Operator, Inc., Stakeholder Presentation, *Improved Capacity Accreditation*, at 46-51 (March 16, 2022) at <https://www.nyiso.com/documents/20142/29177064/Capacity%20Accreditation%2003-16-22%20v7.pdf/b26e6a99-5f4e-29cc-c60c-47608c78c983>.

Adjusted ICAP. The NYISO would have no objection to making this minor clarification in a compliance filing that could be directed by a Commission order accepting the January 5 Filing.

The NYISO does not support NRDC's recommendation¹⁵ that the Commission require it to submit informational reports on the status and progress of the "Phase II" stakeholder process.¹⁶ Such reports are not likely to add to the existing transparency of the Phase II process and would not be an effective use of NYISO's limited resources. Given the openness of the NYISO's stakeholder process along with the NYISO willingness to make an additional compliance filing at the end of Phase II in response to the NYPSC's comments (discussed below), the NYISO does not see any benefit from periodic, interim Phase II progress reports.

Similarly, it would be premature to adopt NRDC's suggestion that the NYISO be directed to file reports "to document the total load carrying capacity and marginal UCAP of each resource class when it updates the resource accreditation each year."¹⁷ NRDC notes that the Commission imposed a similar requirement on PJM.¹⁸ However, as the NYISO has emphasized, there are significant differences between PJM's average class-based accreditation model and what the NYISO has proposed.¹⁹ At a minimum, the Commission should wait until after the NYISO

¹⁵ See NRDC Comments at 12-13.

¹⁶ As the January 5 Filing explained, the NYISO intends to work with its stakeholders through the Phase II to develop implementation details and technical specifications related to the marginal capacity accreditation design. See January 5 Filing at 43-44. The Phase II process is already underway and is expected to last throughout 2022.

¹⁷ See NRDC Comments at 13.

¹⁸ *Id.*

¹⁹ See, e.g., New York Independent System Operator, Inc., *Request for Leave to Answer and Answer*, Docket No. ER22-772-000 at 19-20 (March 16, 2022).

submits a post-Phase II compliance filing before deciding if there is the same need for informational reports to promote transparency in the NYISO as there was in PJM.

B. THE TARIFF PROVISIONS INCLUDED IN THE JANUARY 5 FILING FULLY SATISFIED FPA SECTION 205 AND THE COMMISSION’S RULE OF REASON BUT THE NYISO HAS NO OBJECTION TO MAKING FURTHER CLARIFYING ADDITIONS TO ITS MARGINAL CAPACITY ACCREDITATION DESIGN AT THE CONCLUSION OF THE “PHASE II” PROCESS

The NYPSC Comments reiterate the NYPSC’s strong support for the January 5 Filing, including the proposed marginal capacity accreditation design.²⁰ They emphasize that marginal accreditation is well suited both to producing efficient price signals and preserving reliability in New York in light of the state’s ambitious clean energy policies.

The NYPSC also asks that the NYISO be given a compliance directive to address the same ICAP to UCAP translation tariff language discussed by NRDC.²¹ As noted above, the NYISO does not oppose addressing that issue in a compliance filing.

In addition, the NYPSC requests that the NYISO’s compliance filing “report on the outcome of the pending stakeholder discussions concerning capacity accreditation” and “describe the resulting accreditation approach in the tariff.”²² The NYISO has argued, and continues to believe, that the January 5 Filing demonstrated that the proposed marginal capacity accreditation design was just, reasonable, and not unduly discriminatory. The NYISO likewise continues to believe that the tariff revisions describing marginal accreditation are more than sufficiently detailed to comply with the requirements of FPA Section 205 and the Commission’s “Rule of Reason.” Nevertheless, the NYISO does not object to making a future compliance filing that

²⁰ See NYPSC Comments at 4-5.

²¹ See NYPSC Comments at 7-8.

²² NYPSC Comments at 8.

would add more clarifying detail to tariff provisions addressing the major components of the marginal capacity accreditation design.

To be clear, this does not mean that the NYISO consents to incorporating into the Services Tariff all of the potentially large number of implementation details and technical specifications that will be developed during Phase II.²³ Attempting to do so would likely result in tariff provisions that were overly detailed and prescriptive to the point where they would unreasonably restrict the NYISO's practical ability to implement them. Such an outcome would clearly be contrary to the Rule of Reason.

However, the NYISO would consent to including additional language in the tariff to clarify provisions that are "key determinants of capacity auction outcomes and rates. . . ."²⁴ The NYISO believes that including such clarifications in the tariff could be appropriate even if doing so goes beyond the minimum requirements of the Rule of Reason. For example, the NYISO would not object to specifying whether it will utilize an ELCC or MRI technique to model marginal reliability contributions. But including the mathematical details associated with those techniques in the tariff would not be appropriate.

It is premature at this time to attempt to identify exactly which additional details could be included in the Services Tariff and which should not. The Commission should instead leave it to the NYISO to propose additional tariff language in a compliance filing to be made at the end of Phase II. Interested parties could then comment on that compliance filing and the Commission could consider their input before deciding whether the updated marginal capacity accreditation provisions were consistent with the Rule of Reason. The NYISO expects that it would be in a

²³ The NYPSC Comments at 3-4 could be interpreted to require the filing of all implementation details and procedures in the Services Tariff. Doing so would be excessive under the Rule of Reason.

²⁴ NYPSC Comments at 8.

position to make such a compliance filing within ninety days from the completion of Phase II. The NYISO anticipates that this should leave ample time for the Commission to act before the marginal capacity accreditation design is first implemented for the Capability Year beginning on May 1, 2024.

III. CONCLUSION

In conclusion, the NYISO requests that the Commission accept this answer, accept the January 5 Filing (as amended by the March 11 Response) effective on May 11, 2022, and direct the NYISO to make a compliance filing to include any necessary tariff clarifications, including the clarification sought by NRDC regarding ICAP to UCAP translation, at the conclusion of the Phase II process.

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 18th day of April, 2022.

/s/ Mohsana Akter

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