

August 1, 2022

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: New York Independent System Operator, Inc., Compliance Filing and Request for Commission Action No Later Than August 31, 2022; Docket No. ER20-1718-___

Dear Ms. Bose:

In accordance with Paragraph 7 of the Commission's June 2, 2022, Letter Order ("June Order"),¹ and its February 17, 2022, *Order Addressing Arguments Raised on Rehearing, Setting Aside Prior Order, and Accepting Tariff Revisions* ("February Order")² and consistent with the March 21, 2022 Compliance Filing,³ the New York Independent System Operator, Inc. ("NYISO") respectfully submits this compliance filing. The NYISO's proposed compliance tariff revisions address the conforming changes that the Commission has required be made to the "buyer-side" capacity market power mitigation measures (the "BSM Rules") in Attachment H to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). Specifically, the NYISO must conform previously proposed tariff revisions from its "Part A Enhancements Filing"⁴ that were originally submitted in April 2020, with more extensive BSM Rule changes that were filed by the NYISO on January 5, 2022 as part of the Comprehensive Mitigation Review⁵ and recently accepted by the Commission's May 10, 2022 Order in Docket No. ER22-772-001.⁶ ("May 10 Order").

¹ N.Y. Indep. Sys. Operator, Inc., 179FERC ¶61,164 (2022).

² N.Y. Indep. Sys. Operator, Inc., 178 FERC ¶61,101 (2022).

³ N.Y. Indep. Sys. Operator, Inc., *Compliance Filing and Request for Extension of Time to Submit Conforming Tariff Revisions*, Docket No. ER20-1718-000 (March 21, 2022) ("March 21 Compliance Filing").

⁴ N.Y. Indep. Sys. Operator, Inc., *Proposed Enhancements to the "Part A Exemption Test" Under the "Buyer-Side" Capacity Market Power Mitigation Measures*, Docket No. ER20-1718-000 (April 30, 2020) (as amended July 9, 2020) ("Part A Enhancements Filing").

⁵ N.Y. Indep. Sys. 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) (as amended, March 11, 2022) (the "January 5 Filing").

⁶ N.Y. Indep. Sys. Operator, Inc., 179 FERC ¶61,102 (2022).

The proposed revisions included in this compliance filing are either expressly required by the February and June Orders or are clearly necessary to implement or clarify the NYISO's BSM Rules to accommodate the Commission's directives. As a result of the recent changes to the BSM Rules accepted in Docket No. ER22-772, the compliance tariff revisions included here are largely non-substantive clarifying adjustments.

Specifically, the NYISO is proposing to begin applying the Part A Exemption Test⁷ to the Class Year that immediately follows Class Year 2021 and for any Expedited Deliverability Study that starts after August 1, 2022. There are additional clarifying adjustments that reflect the elimination of a Renewable Exemption from the BSM Rules due to the fact that these resources (intermittent wind and solar) are now "Excluded Facilities," which are no longer subject to the BSM Rules. The Commission has previously allowed the NYISO to include revisions in compliance filings that were not explicitly directed by an order but were necessary to accommodate or implement required compliance revisions.⁸ As discussed below, the NYISO is proposing a small number of these necessary additional revisions, principally to address ministerial and clarifying changes to the pertinent sections of the Services Tariff that occurred in the three years since the Part A Enhancements were first proposed.

The NYISO reviewed its compliance proposal at the July 15, 2022 Installed Capacity Working Group meeting and has made several minor additional changes in response to stakeholder input. It also consulted closely with the independent Market Monitoring Unit ("MMU").

The NYISO respectfully requests that the Commission issue an order accepting this filing, by August 31, 2022, without imposing any conditions or instituting any further proceedings. Such an order will provide finality and market certainty with regard to the application of the BSM Rules, particularly with regard to the conduct of the Part A Exemption Test going forward for the Class Year immediately following Class Year 2021 and any Expedited Deliverability Studies that begin after August 1, 2022.

⁷ Capitalized terms that are not otherwise defined herein shall have the meaning specified in the Services Tariff or in the NYISO's Open Access Transmission Tariff. The "Part A Exemption Test" and "Part B Exemption Test" under the BSM Rules are established by Section 23.4.5.7.2 of the Services Tariff. The two exemption tests have been part of the BSM Rules since their inception but did not become defined tariff terms until the February and June Orders.

⁸ See, e.g., *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh'g*, 127 FERC ¶ 61,042 (2009) (accepting proposed additional tariff revisions that were necessary to implement the modifications directed by the Commission and to correct drafting errors or ambiguities in a compliance filing).

I. COMMUNICATIONS

Communications regarding this proceeding should be sent to:

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***Designated to receive service.**

II. LIST OF DOCUMENTS SUBMITTED

The NYISO submits the following documents with this transmittal letter:

1. A blacklined version of the NYISO Services Tariff compliance revisions proposed in this filing ("Attachment I"); and
2. A clean version of the NYISO Services Tariff compliance revisions proposed in this filing ("Attachment II").

III. BACKGROUND

The Part A Enhancements Filing proposed four separate improvements involving the Part A Exemption Test and the Part B Exemption Test. As the NYISO has previously explained:

The Part A Exemption Test currently compares the forecast of capacity prices in the first year of a single Mitigation Study Period for the Class Year Study, Additional SDU Study, or the Expedited Deliverability Study to the Default Offer Floor, which is 75 percent of the Net Cost of New Entry ("CONE") of the hypothetical unit modeled in the most recent ICAP Demand Curve Reset. A new entrant is exempted if the price forecast for the first year is higher than the Default Offer Floor. The Part A Exemption Test therefore does not focus on the economics of an individual project or the timing of the project's expected market entry. Instead, it allows an entrant to avoid an Offer Floor if, in that first year of the Mitigation Study Period, the market is approaching the minimum required

level of capacity needed in a Locality regardless of whether this is due to load growth or the exit of existing resources.

Under the Part B Exemption Test, the NYISO examines the economics of individual entrants. For each Examined Facility, it compares a forecast of capacity prices in the three year Mitigation Study Period, which is assumed to be the first three years of an Examined Facility's operation, to the Net CONE of the Examined Facility, so that a new entrant will be exempted "if the price forecast for the three years is higher than the Net CONE of the Examined Facility."⁹

The Part A Enhancements Filing first proposed to modify the NYISO's current practice of conducting the Part Exemption B test prior to the Part A Exemption Test. It instead proposed to conduct the Renewable Exemption analysis¹⁰ first, then the Part A Exemption Test, and finally the Part B Exemption Test. Second, the NYISO proposed to establish two separate Part A Mitigation Study Periods, which correspond to the two consecutive three-year periods used in the Part A Exemption Test. Third, the NYISO proposed to evaluate resources under the Part A Exemption Test for each Capability Year of the corresponding three-year Part A Mitigation Study Period in which each project is grouped. Finally, the Part A Enhancements Filing modified how Examined Facilities are ordered for evaluation under the Part A Exemption Test to prioritize "Public Policy Resources" that were more likely to be constructed given New York State laws, regulations, and policies.¹¹

The Commission rejected the Part A Enhancements Filing in September 2020 on the theory that the NYISO's proposal was unduly discriminatory.¹² The NYISO sought rehearing of the September 2020 Order. When the Commission did not take substantive action on rehearing within thirty days,¹³ the NYISO filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.

The NYISO moved on to pursue more extensive reforms to the BSM Rules. That effort culminated in the January 5 Filing, which among other things, proposed to excuse "Excluded Facilities," *i.e.*, new resources that serve the goals of New York State's Climate Leadership and Community Protection Act, from the BSM Rules. Of relevance here, the January 5 Filing

⁹ Part A Enhancements Filing at 4 (footnotes omitted).

¹⁰ See *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121, at P 18, *order on compliance*, 172 FERC ¶ 61,058 (2020) (NYISO Renewables Proceeding) (accepting, subject to condition, NYISO's proposed renewable resources exemption); *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER16-1404-003 (Oct. 20, 2020) (delegated order).

¹¹ See, *e.g.*, Part A Enhancements Filing at 2.

¹² See *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,206 (2020) ("September 2020 Order").

¹³ See *Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration*, New York Independent System Operator, Inc., Docket No. ER20-1718-002 (Nov. 5, 2

explained that the Part A and Part B Exemption Tests would still be performed for resources that continued to be subject to the BSM Rules. The NYISO indicated that some of the Part A Enhancements were no longer pertinent in light of the January 5 Filing, but that others would still be valuable enhancements to the current Part A Test and Part B Test and could be readily integrated with the improvements proposed in the January 5 Filing.

The Commission then issued the February Order which responded to the NYISO's and others' requests for rehearing of the September 2020 Order. The Commission modified the discussion in the September 2020 Order, set the September 2020 Order aside in relevant part, and accepted the proposed Part A Enhancements subject to a compliance filing.

On March 21, 2022, the NYISO submitted a compliance filing to comply with the February 2022 Order and a request for an extension of time to submit revisions to its Services Tariff. The March 21 Compliance Filing informed the Commission that it would no longer be practicable to immediately apply the improvements in the Part A Enhancements to the ongoing Class Year 2021 due to the position of the study as well as the amount of time that had passed since April 2020 and the magnitude of then-pending tariff revisions in the January 5 Filing. The NYISO indicated that it would apply the Part A Enhancements to the Class Year Study immediately following Class Year 2021 and it also requested an extension of time to submit necessary conforming tariff revisions to make the Part A Enhancements consistent with whatever January 5 Filing proposals were accepted the Commission.

Subsequently, the Commission accepted the January 5 Filing in the May 10 Order. The NYISO then withdrew its petition for review of the September 2020 Order.

Finally, in the June Order the Commission partially accepted the NYISO's March 21 Compliance Filing. The Commission noted that the NYISO had not specified the "effective date that will enable NYISO to apply the Part A Enhancements to the appropriate Class Year, nor does it include any tariff revisions necessary to make the Part A Enhancements effective for the Class Year so indicated." The Commission therefore instructed the NYISO to make this filing no later than August 1, 2022.

IV. DESCRIPTION OF PROPOSED COMPLIANCE TARIFF REVISIONS

A. Revisions to Definitions found in Section 23.2 of the Services Tariff

Section 23.2 of the Services Tariff includes the definitions that are used in the BSM Rules and other capacity market-related mitigation provisions. The NYISO is proposing conforming tariff changes in this section to make the Part A Enhancements originally filed in 2020 conform with the current BSM Rules. First, the NYISO is modifying the definition of "Estimated Initial Decision Period" to clarify when the Part A Test revisions will first be implemented. The NYISO is replacing "Class Year 2019" with the "Class Year immediately following Class Year 2021" and it is replacing "July 1, 2020" with "August 1, 2022" for the threshold of when these revisions will take effect with respect to Expedited Deliverability

Studies.¹⁴ Next, “Public Policy Resource” is being modified to eliminate references to resource types that are now included in the “Excluded Facilities” definition adopted in Docket No. ER22-772. The proposal eliminates from the definition of Public Policy Resources the phrase “an Energy Storage Resource or Intermittent Power Resource solely powered by wind or solar, or” and further modifies the definition to eliminate any zero emitting resources that meet the definition of Excluded Facilities or that have been otherwise determined by the NYISO to meet the Excluded Facilities definition pursuant to Section 23.4.5.7.5.1 of the Services Tariff. The NYISO expects that the overwhelming majority of facilities that would have met the Public Policy Resource definition as originally filed in 2020 will now be Excluded Facilities. However, the NYISO continues to believe that it is important to leave the “Public Policy Resource” term in the tariff due to the possibility that certain resource types or facilities that may be zero emitting resources may not meet the Excluded Facilities definition or otherwise be determined to be an Excluded Facility by the NYISO.

The NYISO also proposes to eliminate the defined terms “Incremental Regulatory Retirements” and “Unforced Reserve Margin” from Section 23.2 as these terms no longer have a function in the BSM Rules due to the elimination of the Renewable Exemption.

B. Proposed Compliance Revisions Governing the Implementation Dates for the Part A Test Revisions.

As discussed above and in its March 21 Compliance Filing, the NYISO is proposing to implement the Part A Exemption Test revisions to the next Class Year study that commences after Class Year 2021 and is now proposing to implement the changes to any Expedited Deliverability Study that commences after August 1, 2022. The NYISO has made such conforming changes within Sections 23.4.5.7.2, 23.4.5.7.3, and 23.4.5.7.15 of the Services Tariff.

C. Additional Necessary Compliance Implementation Revisions

As noted above, the Commission has previously authorized the NYISO to include additional revisions in compliance filings that were not expressly required by the Commission but that are necessary to implement or accommodate such revisions.¹⁵ A number of such revisions are included in this filing. The NYISO is proposing several non-substantive updates to the BSM Rules to eliminate stranded and stale references to the Renewable Exemption and the treatment of Co-located Storage Resources which are no longer pertinent after the May 10 Order. These changes are being proposed in several places within Sections 23.2, 23.4.5.7.3.1 and 23.4.5.7.15.5 of the Services Tariff.

¹⁴ This conforming change is made repeatedly throughout Sections 23.2, including in the defined terms: Part A Exemption, Part A Exemption Test, Part A Group 1 Examined Facilities, Part A Group 2 Examined Facilities, Part A Mitigation Study Period Years 1 through 3, Part A Mitigation Study Period Years 4 through 6, and Public Policy Resource. It also occurs in some fashion to update the timing of the implementation of these Part A Test revisions in Sections 23.4.5.7.2, 23.4.5.7.3, and 23.4.5.7.15 of the Services Tariff.

¹⁵ See n. 8 above.

V. REQUEST FOR COMMISSION ACTION WITHIN THIRTY DAYS

The NYISO respectfully asks that the Commission issue an order accepting this compliance filing, without imposing any conditions or instituting any new proceedings, within thirty calendar days, *i.e.*, by August 31, 2022. Action by that date should provide certainty to the marketplace with regard to the implementation of the Part A Exemption Test revisions.

VI PROPOSED EFFECTIVE DATE

The NYISO is requesting an amended effective date of August 1, 2022. In accordance with the February Order and the June Order, the requested effective date will enable the NYISO to implement the Part A Exemption Test, as revised, going forward for Expedited Deliverability Studies that start after August 1, 2022, and for the upcoming Class Year immediately following Class Year 2021 and subsequent Class Year Studies.

VII. SERVICE

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

VIII. CONCLUSION

In conclusion, the NYISO respectfully asks that the Commission act within thirty days, *i.e.*, by August 31, 2022, to accept this compliance filing without any conditions and without instituting any further proceedings. The NYISO requests that the proposed compliance tariff revisions be made effective August 1, 2022.

Respectfully Submitted,

/s/ David Allen

David Allen

Senior Attorney

New York Independent System Operator, Inc.

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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 1st day of August 2022.

/s/ Mohsana Akter

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