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

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| **New York Independent System Operator, Inc.** | **)** | **Docket No. ER25-596-000** |

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

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure promulgated by the Federal Energy Regulatory Commission ("Commission"),[1] the New York Independent System Operator, Inc. ("NYISO") hereby submits this Request for Leave to Answer and Answer in response to protests and comments regarding the NYISO's proposal submitted on November 29, 2024 in this proceeding ("2025-2029 DCR Filing").[2]

The 2025-2029 DCR Filing represents the culmination of the quadrennial review of the ICAP Demand Curves required by the NYISO Market Administration and Control Area Services Tariff ("Services Tariff").[3] This periodic review (commonly referred to as the "ICAP Demand Curve reset" or "DCR") provides a forum for an open and transparent assessment of the assumptions and parameters for establishing the ICAP Demand Curves.[4] The NYISO's proposal establishes the ICAP Demand Curves for the 2025-2026 Capability Year, as well as the methodologies and inputs used in conducting the tariff-required annual updates to determine the ICAP Demand Curves for the 2026-2027 through 2028-2029 Capability Years.

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[1] 18 C.F.R. §§ 385.212 and 385.213.

[2] Docket No. ER25-596-000, *New York Independent System Operator, Inc.*, 2025-2029 ICAP Demand Curve Reset Proposal (November 29, 2024).

[3] Services Tariff § 5.14.1.2.2.

[4] Capitalized terms not otherwise defined herein shall have the meaning specified in the Services Tariff.

The proposal submitted by the NYISO reflects careful consideration of all stakeholder feedback provided throughout the DCR and strikes a reasonable balance that establishes appropriate ICAP Demand Curves for the 2025-2029 reset period. Consistent with prior resets, due to divergent stakeholder interests, the NYISO did not achieve consensus on all aspects of its proposal.[5] The NYISO identified open issues and responded to each within the 2025-2029 DCR Filing to demonstrate that its proposal is just and reasonable, adequately supported, and consistent with the requirements of the Services Tariff and Commission precedent. The comments and protests submitted in response to the 2025-2029 DCR Filing raise issues previously identified and addressed by the NYISO.

The NYISO has demonstrated that its proposal for the 2025-2029 DCR is just and reasonable, tariff compliant, and fully supported. The comments and protests submitted in this proceeding do not establish that the NYISO's proposal is unjust, unreasonable, or lacks adequate support. Accordingly, the NYISO respectfully reiterates its request that the Commission: (1) issue an order on or before January 28, 2025 accepting the NYISO's proposal; and (2) establish an effective date of January 29, 2025 for the tariff revisions proposed by the NYISO in this proceeding.[6]

## I. REQUEST FOR LEAVE TO ANSWER

Rule 213 of the Commission's Rules of Practice and Procedure generally prohibits answers to certain pleadings, including protests.[7] The Commission, however, has discretion to

[5] 2025-2029 DCR Filing at 7.

[6] Timely Commission action will facilitate the NYISO's ability to proceed with the necessary steps to conduct the capacity auctions for the upcoming 2025 Summer Capability Period. The processes and procedures to prepare for such auctions commence in February 2025. *See* 2025-2029 DCR Filing at 70-71.

[7] 18 C.F.R § 385.213(a)(2). The Commission's Rules of Practice and Procedure authorize answers to pleadings styled as "comments."

waive such prohibition.[8] The Commission has previously determined that a waiver is appropriate in circumstances where an otherwise prohibited 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 Commission in rendering a decision.[9]

This answer clarifies matters in dispute, corrects certain erroneous assertions, provides information that will assist the Commission, and assists in the development of a complete record in this proceeding.[10] Accordingly, the Commission should accept and consider this answer.

## II. ANSWER

The NYISO's proposal for the 2025-2029 DCR strikes a reasonable balance between the divergent positions of commenters. The NYISO's proposal establishes ICAP Demand Curves designed to provide appropriate price signals reflecting the locational value of capacity with respect to maintaining New York's resource adequacy requirements.

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[8] *Id*.

[9] *See, e.g.*, *New York Independent System Operator, Inc.*, 158 FERC ¶ 61,028 (2017) (accepting answers to protests that provided information that assisted the Commission's decision making process); *New York Independent System 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); *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 (2002) (accepting answers to protests that help clarify issues and did not disrupt the proceeding); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 (2000) (accepting an answer deemed useful in addressing issues arising in the proceeding at issue); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 (2000) (accepting an answer that was helpful in the development of the record); and *New York Independent System Operator, Inc.*; 175 FERC ¶ 61,012 (2021) (accepting answers because they provided information that assisted the Commission's decision making process).

[10] The NYISO has sought to limit the scope of this answer to address certain key disputed issues. Thus, this answer does not respond to all arguments and assertions made by parties in response to the 2025-2029 DCR Filing. The Commission should not construe the NYISO's silence as to any assertion or argument in opposition to its proposal as agreement or acquiescence.

### A. The NYISO Has Met Its Burden and Adequately Supported Its Proposal

The 2025-2029 DCR Filing demonstrates that the NYISO's proposal for the 2025-2029 DCR is just and reasonable and adequately supported. The NYISO carefully considered the positions of all parties and adjusted its proposal throughout the DCR in response to such feedback. Although parties do not fully agree with all aspects of the NYISO's proposal, the comments and protests submitted in response to the 2025-2029 DCR Filing do not establish that the NYISO's proposal is unjust, unreasonable, or lacks adequate support.

The NYISO is obligated to demonstrate that its proposal is just and reasonable. The Commission has recognized that this does not require the NYISO to demonstrate that its proposal is the only reasonable outcome or more reasonable than other potential outcomes.[11] As held by the Commission, "FPA section 205 requires the Commission to accept a filing if it is just and reasonable, even if the filing party's proposal is not the best or preferred approach."[12] The Commission acknowledges that there "is not a single just and reasonable rate but rather a zone of rates that are just and reasonable; a just and reasonable rate is one that falls within that zone."[13] The Commission has also explained that "pursuant to FPA section 205, 'the filing party need only demonstrate that its proposed revisions are just and reasonable, not that its proposal is the

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[11] *See, e.g., New York Independent System Operator, Inc.,* 122 FERC ¶ 61,064 at P 14 and fn. 12 (2008) ("2008-2011 DCR Order"); *New York Independent System Operator, Inc.,* 158 FERC ¶ 61,028 at P 156 and fn. 350 (2017) ("2017-2021 DCR Order"); *New York Independent System Operator, Inc.,* 175 FERC ¶ 61,102 at P 130 and fn. 203 (2021) ("2021-2025 DCR Initial Order"); *New York Independent System Operator, Inc.*, 183 FERC ¶ 61,130 at P 34 and fn. 103 (2023) ("2021-2025 DCR Second Remand Order"); *New York Independent System Operator, Inc.,* 185 FERC ¶ 61,010 at P 12, 32, 41, 49, and fn. 184 (2023) ("2021-2025 DCR Second Remand Rehearing Order"); Case No. 21-1166, *Independent Power Producers of New York, Inc. v. FERC,* 2022 WL 3210362 at 3 (D.C. Cir. 2022); and Case 23-1192, *New York State Public Service Commission v. Federal Energy Regulatory Commission*, On Petitions for Review or Orders of the Federal Energy Regulatory Commission at 7-13 (D.C. Cir. June 14, 2024)

[12] *See, e.g.,* 2021-2025 DCR Second Remand Rehearing Order at P 32 (footnotes omitted).

[13] *See, e.g., id*. at P 49, fn. 184 (citation omitted).

most just and reasonable among all possible alternatives.'"[14] The mere fact that other parties may desire a different outcome or changes to certain underlying assumptions does not render the NYISO's proposal unjust or unreasonable nor does it support the need for any adjustments thereto. As held by the Commission, "we must approve the NYISO's proposal if supported as just and reasonable even if there are other just and reasonable proposals."[15]

The 2025-2029 DCR Filing demonstrated that the NYISO's proposal is just and reasonable and provided adequate support for such finding. The NYISO demonstrated that its proposal to use a 2-hour lithium-ion battery energy storage system ("BESS") unit to establish the ICAP Demand Curves for the 2025-2029 reset period is the appropriate result that complies with the requirements of the Services Tariff and is consistent with Commission precedent. The 2025-2029 DCR Filing establishes that a 2-hour BESS unit represents the "lowest fixed, highest variable" cost technology option among all other viable options assessed for the 2025-2029 DCR.[16] To ensure compliance with the requirements of the Services Tariff, the results of the 2025-2029 DCR compel selection of a 2-hour BESS unit as the appropriate technology to establish the ICAP Demand Curves for this reset.[17]

The NYISO established that a 2-hour BESS unit is a viable technology option because it meets the Commission's threshold requirement of being an eligible capacity supply resource

[14] *See, e.g., id*. at P 41 (footnote omitted).

[15] *See, e.g.*, 2008-2011 DCR Order at P 14, fn. 12 (citation omitted).

[16] 2025-2029 DCR Filing at 7-33.

[17] *See* Services Tariff § 5.14.1.2.2; and *New York Independent System Operator, Inc.*, 113 FERC ¶ 61, 217 at P 11-12 (2005). As directed by the Commission, the Services Tariff requires that the "peaking unit" technology used to establish each ICAP Demand Curve represent "the unit with the technology that results in the lowest fixed costs and highest variable costs among all other units' technology that are economically viable."

pursuant to the NYISO's Commission-approved capacity market rules.[18] Furthermore, the NYISO demonstrated that a 2-hour BESS unit satisfies each of the additional screening factors accepted by the Commission in assessing "economic viability" pursuant to the Services Tariff.[19] Specifically, the NYISO demonstrated that a 2-hour BESS unit is: (1) a proven technology; (2) widely available to developers; (3) a highly flexible technology that can be economically dispatched; and (4) capable of being cycled to permit discharge of its stored energy during peak periods. These findings for a 2-hour BESS unit are consistent with the results of the economic viability assessment conducted for BESS units during the 2021-2025 DCR. The NYISO further demonstrated that a 2-hour BESS unit is capable of supporting resource adequacy and provides flexible operating capabilities that can assist in meeting real-time system needs in New York.[20]

A rigorous evaluation was undertaken to identify the cost to construct and operate a 2-hour BESS unit in each capacity region.[21] Additionally, the NYISO demonstrated the development of a reasonable set of financial parameters to translate the estimated capital construction costs into an annualized value that appropriately accounts for the risks associated with the investment in new capacity supply resources in New York, as well as market and

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[18] 2025-2029 DCR Filing at 7-8 and 11-12; 2025-2029 DCR Filing at Attachment V (*Affidavit of Zachary T. Smith*), ¶ 13 ("Smith Affidavit"); and Smith Affidavit at Exhibit B, p. 9 ("NYISO Staff Recommendations").

[19] 2025-2029 DCR Filing 11-12 and 15-33; 2025-2029 DCR Filing at Attachment III (*Affidavit of Paul J. Hibbard, Dr. Todd Schatzki, Joseph Cavicchi, Charles Wu, and Dr. Daniel Stuart*), ¶ 38, 59-60 and 62 ("AG Affidavit"); 2025-2029 DCR Filing at Attachment IV (*Affidavit of Chad W. Swope, Kieran McInerney, and Matthew Lind*), ¶ 15-16 ("1898 & Co. Affidavit"); AG Affidavit at Exhibit F, pp. 19-20 ("Independent Consultant Report"); NYISO Staff Recommendations at 8-9; and Smith Affidavit at ¶ 13.

[20] 2025-2029 DCR Filing at 16; NYISO Staff Recommendations at 9-10 and 59-61; 2025-2029 DCR Filing at Attachment VI (*Affidavit of Aaron D. Markham*), ¶ 6-11 ("Markham Affidavit"); Smith Affidavit at ¶ 14-17; AG Affidavit at ¶ 97; and 1898 & Co. Affidavit at ¶ 16.

[21] 2025-2029 DCR Filing at 33-45; Independent Consultant Report at 23-57; AG Affidavit at ¶ 27-36; 1898 & Co. Affidavit at ¶ 13, 22-33, 39 and 42-44; NYISO Staff Recommendations at 11-24; and Smith Affidavit at Exhibit A.

technology-specific risks attendant to the investment in a 2-hour BESS unit in New York.[22] The NYISO also demonstrated the development of a thorough and reasonable methodology for estimating the potential net Energy and Ancillary Services revenues that could be earned by participation of a 2-hour BESS unit in the NYISO-administered markets.[23] Using these results, the NYISO determined the appropriate parameters for the ICAP Demand Curves applicable for the 2025-2026 Capability Year.[24] The NYISO also identified the appropriate inputs and methodologies to conduct the annual updates prescribed by the Services Tariff to determine the ICAP Demand Curves for the 2026-2027 through 2028-2029 Capability Years.[25]

The NYISO's proposal for the 2025-2029 DCR is just and reasonable, compliant with the requirements of the Services Tariff, and consistent with Commission precedent. Although potential alternative outcomes may be identifiable, the existence of any such alternatives does not undermine the demonstration made by the NYISO in this proceeding to support its proposal as just and reasonable. As a result, the Commission should accept the NYISO's proposal without modification or unnecessary delay.

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[22] 2025-2029 DCR Filing at 53-61; Independent Consultant Report at 57-74 and Appendix B; AG Affidavit at ¶ 48, 50-51, 113-116 and 121-149; *Supplemental Affidavit of Paul J. Hibbard, Dr. Todd Schatzki, Joseph Cavicchi, Charles Wu, and Dr. Daniel Stuart* at ¶ 4-16, attached hereto as Attachment I ("AG Supplemental Affidavit"); NYISO Staff Recommendations at 20 and 24-28; and Smith Affidavit at ¶ 11, 29 and Exhibit A.

[23] 2025-2029 DCR Filing at 45-52; Independent Consultant Report at 75-76, 81-93, 106-109, 112 and Appendix E; AG Affidavit at ¶ 76-77 and 93-105; and NYISO Staff Recommendations at 30-37 and 42-43.

[24] 2025-2029 DCR Filing at 52-53 and 61-63; Independent Consultant Report at 113-121; AG Affidavit at ¶ 25, 52 and 54; NYISO Staff Recommendations at 43-50; and Smith Affidavit at ¶ 9, 11 and Exhibit A.

[25] 2025-2029 DCR Filing at 63-69; Independent Consultant Report at 125-131; AG Affidavit at ¶ 26, 53 and 150-157; 1898 & Co. Affidavit at ¶ 45-47; and NYISO Staff Recommendations at 53-58.

### B. The NYISO Carefully Considered Stakeholder Feedback

The NYISO carefully considered stakeholder feedback in developing its proposal for the 2025-2029 DCR. The NYISO's proposal reflects modifications made in response to stakeholder feedback, including certain refinements directed by the NYISO Board of Directors ("Board") based on its review of such feedback.[26] The issues raised by stakeholders in this proceeding were identified and addressed in the 2025-2029 DCR Filing.[27]

Below, the NYISO addresses the following matters raised in the comments and protests in response to the 2025-2029 DCR Filing: (1) capability of a 2-hour BESS unit to contribute to meeting New York's resource adequacy requirements;[28] (2) consideration of future Capacity Accreditation Factor ("CAF") values;[29] (3) the establishment of appropriate financial parameters;[30] (4) consideration of potential future cost declines for a 2-hour BESS unit;[31] and (5) application of the federal investment tax credit ("ITC") to the interconnecting transmission line (often referred to as the "generator lead") of a 2-hour BESS unit.[32]

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[26] 2025-2029 DCR Filing at 2-7 and 15; and Smith Affidavit at ¶ 11, 26-29 and Exhibit A.

[27] 2025-2029 DCR Filing at 7, 13-33, 37-38, 42-45, 51-56, 60-61 and 65-66; Independent Consultant Report at 20-23, 42-45, 47-48, 50-58, 62-68; AG Affidavit at ¶ 41, 48-51, 97, 110-112, 114-115, 117-120, 124-129, 132-34, 138, 148-149 and 153-157; 1898 & Co. Affidavit at ¶ 16, 21, 23, 27, 35-37, 40-41, 44 and 47; NYISO Staff Recommendations at 4, 9-11, 21, 25-28 and 59-63; Smith Affidavit 14-21, 24-29 and Exhibit A; and Markham Affidavit 7-11.

[28] *See, e.g.*, Docket No. ER25-596-000, *supra*, Protest of Independent Power Producers of New York, Inc. at 6-12 (December 20, 2024) ("IPPNY Protest"); Docket No. ER25-596-000, *supra*, Protest of Ravenswood Operations, LLC at 6-12 (December 20, 2024) ("Ravenswood Protest"); Docket No. ER25-596-000, *supra*, Motion to Intervene and Comments of the New York ISO Market Monitoring Unit at 15-20 (December 20, 2024) ("MMU Comments"); and Docket No. ER25-596-000, *supra*, Comments of the Electric Power Supply Association at 2-3 (December 20, 2024) ("EPSA Comments).

[29] *See, e.g.*, IPPNY Protest at 19-29; Ravenswood Protest at 13; and MMU Comments at 4-15.

[30] *See, e.g.*, IPPNY Protest at 12-29; and Ravenswood Protest at 12-16.

[31] *See, e.g.*, IPPNY Protest at 15-19; and Ravenswood Protest at 5 and 13.

[32] *See, e.g.*, Docket No. ER25-596-000, *supra*, Comments and Limited Protest of the Consumer Stakeholders at 23-28 (December 20, 2024) ("Consumer Stakeholders Comments and Protest"); and

1. A 2-Hour BESS Unit Can Assist in Meeting New York's Resource Adequacy Requirements

Certain parties contend that the NYISO's selection of a 2-hour BESS unit is not appropriate due to the limited operating capability of this technology option. These stakeholders contend that a 2-hour BESS unit is ineligible to be selected as the technology for establishing the ICAP Demand Curves because it cannot meet system peak needs.[33] Certain of these stakeholders also claim that a 2-hour BESS unit must meet certain "eligibility criteria" that are not required by reliability rules, the Services Tariff, or Commission precedent.[34]

The NYISO carefully considered and assessed the resource adequacy needs of New York in selecting a 2-hour BESS unit as the appropriate technology to establish the ICAP Demand Curves for the 2025-2029 DCR.[35] Due in part to the proliferation of behind-the-meter solar in New York, the grid currently presents a resource adequacy risk profile consisting of predominantly short duration peaks of one or two hours.[36] As an incremental resource addition to an underlying resource fleet, a 2-hour BESS unit provides the necessary operating capability to assist in meeting New York's resource adequacy requirements.[37]

The Commission has held it is impermissible to engraft "requirements" that are not established in the Services Tariff and/or applicable reliability rules in an attempt to undermine

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Docket No. ER25-596-000, *supra*, Limited Protest of the New York State Energy Research and Development Authority at 6-17 (December 20, 2024) ("NYSERDA Protest").

[33] *See, e.g.*, IPPNY Protest at 6-12; Ravenswood Protest at 6-12; EPSA Comments 2-3; and MMU Comments at 15-20.

[34] *See, e.g.*, IPPNY Protest at 9-12; Ravenswood Protest at 6-12; and MMU Comments at 15-20.

[35] 2025-2029 DCR Filing at 11-12, 16-19 and 26-29; Independent Consultant Report at 18-20; AG Affidavit at ¶ 38, 59-60, 62 and 97; 1898 & Co. Affidavit at ¶ 15-18, 22 and 27; NYISO Staff Recommendations at 8-10 and 59-61; Smith Affidavit at ¶ 13-17; and Markham Affidavit at ¶ 6-11.

[36] 2025-2029 DCR Filing at 16-18; NYISO Staff Recommendations at 9-10 and 59-60; Markham Affidavit at ¶ 6-7; Smith Affidavit at ¶ 14; AG Affidavit at ¶ 97; and 1898 & Co. Affidavit at ¶ 16.

[37] *Id.*

the viability of a potential technology option.[38] The Commission also prohibits speculation about potential future rules and requirements, mandating that each DCR consider only existing rules and requirements at the time conducted.[39] The NYISO demonstrated that neither the Services Tariff nor current reliability rules establish a minimum operating duration requirement that would prohibit consideration of a 2-hour BESS unit as a technology option for setting the ICAP Demand Curves.[40] Commission precedent also does not establish any minimum durational requirement that would disqualify consideration of a 2-hour BESS unit.[41]

Furthermore, the NYISO demonstrated that its current capacity market is designed to meet New York's resource adequacy requirements.[42] The Commission has consistently acknowledged and confirmed this fundamental purpose of the NYISO's existing capacity market design.[43] The Commission has aptly described the capacity market's function as follows: "the basic purpose of the capacity market: ensuring resource adequacy at just and reasonable rates."[44] The procedures for annually determining locational minimum capacity requirements do not alter the objective of the NYISO's current capacity market design. The current procedures for

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[38] *New York Independent System Operator, Inc.*, 146 FERC ¶ 61,043 at P 60 (2014) ("2014-2017 DCR Order"); and 2025-2029 DCR Filing at 17-19.

[39] *See, e.g.*, 2014-2017 DCR Order at 74; 2017-2021 DCR Order at P 61; 2021-2025 DCR Initial Order at P 161; *New York Independent System Operator, Inc.*, 181 FERC ¶ 61,227 at P 27 (2022) ("2021-2025 DCR First Remand Order"); 2021-2025 DCR Second Remand Order at P 33; and 2021-2025 DCR Second Remand Rehearing Order at P 31.

[40] 2025-2029 DCR Filing at 17.

[41] *Id*. at 18-19.

[42] *Id*. at 26-29; NYISO Staff Recommendations at 9-10 and 59-61; Smith Affidavit at ¶ 15-17; and Markham Affidavit at ¶ 7 and 11.

[43] *See, e.g., New York Independent System Operator, Inc.*, 105 FERC ¶ 61,108 at P 42 (2003); *New York Independent System Operator, Inc.*, 118 FERC ¶ 61,182 at P 2 (2007); *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 at P 2 (2008); *New York Independent System Operator, Inc.*, 165 FERC ¶ 61,011 at P 72 (2018); *New York Independent System Operator, Inc.*, 170 FERC ¶ 61,051 at P 34 (2020); and *New York Independent System Operator, Inc.*, 179 FERC ¶ 61,102 at P 41 (2022).

[44] *New York Independent System Operator, Inc.*, 179 FERC ¶ 61,102 at P 41 (2022).

annually establishing such locational requirements include certain considerations related to transmission security. However, such considerations do not seek to expressly value resource contributions toward meeting transmission security requirements. Instead, the current market design seeks to ensure that the locational requirements established to meet New York's resource adequacy requirements are not set based on assumed levels of power transfers into transmission-constrained regions that would violate transmission security based limitations on such transfer levels.[45] Consequently, claims by certain parties that the capability to resolve transmission security needs is an eligibility requirement for technologies to serve as the basis for the ICAP Demand Curves are inconsistent with the NYISO's current capacity market design, the requirements of the Services Tariff, and Commission precedent.[46] The Commission should, therefore, dismiss such claims.

Certain opposing parties continue to present arguments that represent a fundamental misunderstanding of the operation of the ICAP Demand Curves and use of a marginal capacity supply addition to serve as the basis for such curves.[47] The "peaking unit" represents an incremental capacity supply resource that can be added to the system as needed to ensure continued maintenance of New York's resource adequacy requirements. This incremental addition need not be sized to meet all potential resource adequacy needs that may arise regardless of magnitude. Rather, such marginal addition is designed to represent a reasonable resource design and, consistent with Commission precedent, must be replicable.[48] If a circumstance arose that required the addition of a MW quantity greater than the size of a single

[45] 2025-2029 DCR Filing at 28; Smith Affidavit at ¶ 16; and Services Tariff § 5.11.4.

[46] *See, e.g.*, IPPNY Protest at 9-12; Ravenswood Protest at 6-12; and MMU Comments 15-20.

[47] *See, e.g.*, IPPNY Protest at 10; and Ravenswood Protest at 10, fn. 18.

[48] 2025-2029 DCR Filing at 8; and 2017-2021 DCR Order at P 19 and 65.

"peaking unit," the curves operate to maintain the appropriate price signals to incentivize additional supply until resolution of such resource adequacy deficiency. Contrary to claims of certain parties, this does not translate into a requirement to base the ICAP Demand Curves on a net cost of new entry that represents multiples of a single "peaking unit" addition.[49] Rather, in the face of a resource adequacy deficiency, the curves operate to provide price signals that ensure revenue adequacy for each "peaking unit" addition until the deficiency is resolved.[50]

The NYISO has appropriately applied the requirements of the Services Tariff and Commission precedent in determining that a 2-hour BESS unit is the appropriate technology option to establish the ICAP Demand Curves for the 2025-2029 reset period. In doing so, the NYISO clearly demonstrated and adequately supported its findings that a 2-hour BESS unit is: (1) an eligible technology option for establishing the ICAP Demand Curves; and (2) capable of assisting to meet New York's resource adequacy requirements. The Commission should accept the NYISO's determination and reject irrelevant and/or unsubstantiated claims to the contrary.

2. The NYISO Carefully Considered and Appropriately Accounted for Future CAF Variability

Certain stakeholders and the Market Monitoring Unit ("MMU") contend that the future CAF values for 2-hour BESS units will: (1) precipitously decline over the course of the 2025-2029 reset period; and (2) such declines will result in selection of an alternative technology to set the ICAP Demand Curves in the next or another future DCR. These parties further allege that

[49] *See*, *e.g.*, IPPNY Protest at 10; and Ravenswood Protest at 10, fn. 18.

[50] For example, if a resource adequacy deficiency of 400 MW were to arise, the curves would produce a price signal greater than the estimated net cost of new entry for a 2-hour BESS unit (as translated into a seasonal, monthly value; such value referred to as the "reference point price"). The addition of a single 200 MW, 2-hour BESS unit (*i.e.*, the NYISO's proposed peaking unit technology for each demand curve) would not fully resolve the deficiency. Thus, the curves would maintain a price signal greater than the applicable reference point price and, thereby, facilitate entry of an additional 200 MW, 2-hour BESS unit to resolve the hypothetical resource adequacy need.

these conditions will result in a 2-hour BESS unit becoming uneconomic during the assumed 20-year amortization period. As a result, these entities claim that had such future conditions been considered, a 2-hour BESS unit would not represent the "lowest fixed cost" technology option for the 2025-2029 DCR.[51]

Such claims are predicated on unsubstantiated certainty that future CAF values for 2-hour BESS units will precipitously decline over the course of the 2025-2029 reset period. The NYISO conducted an evaluation of potential future CAF values for 2-hour BESS units, assessing a range of future system conditions through 2030.[52] The NYISO's analysis identified that future CAF values for a 2-hour BESS unit are highly dependent upon the underlying system conditions, including the timing, magnitude and types of future renewable resource and energy storage resource deployments, changes in load requirements and profiles, as well as changes in system topology.[53] Despite claims to the contrary, the NYISO's analysis identified that precipitous declines in the CAF values for 2-hour BESS units during the 2025-2029 reset period are not a certainty. In fact, depending on the future system conditions, CAF values for 2-hour BESS units may increase or decrease through 2030.[54] The Commission, therefore, should reject

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[51] *See, e.g.*, IPPNY Protest at 19-29; Ravenswood Protest at 13; and MMU Comments at 4-15.

[52] 2025-2029 DCR Filing at 20-22; NYISO Staff Recommendations at 61-63; and Smith Affidavit at ¶ 16 and 18-21.

[53] *Id.*

[54] *Id.* The NYISO recently provided updated preliminary information regarding potential CAF values for the upcoming 2025-2026 Capability Year. The updated preliminary information is substantially similar to the prior preliminary information released in October 2024. Consistent with the October 2024 preliminary information, the updated preliminary information continues to identify the potential for material increases to the CAF values for 2-hour resources compared to the currently effective values for the 2024-2025 Capability Year. The NYISO will determine final CAF values for the 2025-2026 Capability Year during the first calendar quarter of 2025. The NYISO must post the final values on its website by March 1, 2025. *See* NYISO, *2025-2026 Informational Capacity Accreditation Factors (iCAFs) Set 2* (to be presented at the January 7, 2025 Installed Capacity Working Group), available at: https://www.nyiso.com/documents/20142/48947506/2025-2026%20Informational%20CAF%20Set%202%20-%2001072025%20ICAPWG_Final.pdf.

unsubstantiated claims of certainty that future CAF values for 2-hour BESS units will precipitously decline during the 2025-2029 reset period.

The NYISO carefully considered the potential impact of future CAF values in selecting a 2-hour BESS unit to serve as the basis for the ICAP Demand Curves for the 2025-2029 DCR.[55] The NYISO's evaluation recognized that future CAF values for 2-hour BESS units are uncertain, cannot be precisely forecasted, and may increase or decrease over the course of the 2025-2029 reset period.[56] The NYISO's assessment also acknowledged that the CAF values determined for 2-hour BESS units provide an appropriate measure of the technology's contribution to meeting New York's resource adequacy needs and will vary over time to account for changes in system conditions.[57] If selected as the technology to anchor the ICAP Demand Curves, the actual CAF values determined annually for 2-hour BESS units will be reflected in the demand curves used to conduct the monthly spot auctions, ensuring that the curves continue to provide revenue adequacy for a 2-hour BESS unit if conditions requiring resource additions to maintain resource adequacy arise during the 2025-2029 reset period.[58]

The uncertainty of future CAF values for 2-hour BESS units was appropriately considered in developing the parameters to finance investment in a new 2-hour BESS unit in New York.[59] This risk of uncertainty was a factor driving the recommendation for a higher

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[55] 2025-2029 DCR Filing at 22-25 and 53-56; Independent Consultant Report at 57-59 and 62-65; AG Affidavit at ¶ 48-50, 114-115, 124-129, 132-134 and 138; AG Supplemental Affidavit at ¶ 11 and 15-16; NYISO Staff Recommendations at 4, 24-28 and 61-63; and Smith Affidavit at ¶ 19-21.

[56] *Id.*

[57] 2025-2029 DCR Filing at 22-23; NYISO Staff Recommendations at 9-10, 45-46 and 61; and Smith Affidavit at ¶ 16, 18 and 21.

[58] *Id.*

[59] 2025-2029 DCR Filing at 22-25 and 53-56; Independent Consultant Report at 57-59 and 62-65; AG Affidavit at ¶ 48-50, 114-115, 124-129, 132-134 and 138; AG Supplemental Affidavit at ¶ 11 and 15-16; NYISO Staff Recommendations at 4, 24-28 and 61-63; and Smith Affidavit at ¶ 19-21.

weighted average cost of capital ("WACC") value for a 2-hour BESS unit compared to the value determined for fossil-fired frame turbine options. The recommended WACC value for a 2-hour BESS unit includes cost of equity ("COE") and cost of debt ("COD") values that are each 50 basis points higher than the corresponding values recommended for a fossil-fired frame turbine representing the relative higher risk posed by investment in a 2-hour BESS unit in New York.[60]

Furthermore, outcomes of future DCRs cannot be forecasted with reasonable precision.[61] The outcomes of future resets are dependent on a multitude of factors that cannot be accurately predicted at this time, including the viable technology options to be considered, the costs and estimated revenues of each such technology, and the potential impacts of future CAF values for each such technology option. Attempting to provide adjustments in this reset for such unknowable future outcomes is unduly speculative and should be rejected by the Commission.

Claims by certain parties that future CAF values for a 2-hour BESS unit will precipitously decline over the course of the 2025-2029 reset period are unsubstantiated. The NYISO's proposal appropriately addresses the risk attendant to future CAF uncertainty for 2-hour BESS units. Accordingly, the Commission should accept the NYISO's proposal as just and reasonable without modification.

3. The NYISO Proposed Appropriate Financial Parameters Accounting for the Risk of Investing in a 2-Hour BESS Unit

Certain parties contend that the recommended 10.49% WACC value for a 2-hour BESS unit is understated.[62] These parties contend that the proposed WACC value does not account for

[60] *Id.*

[61] 2025-2029 DCR Filing at 23-25; Independent Consultant Report at 64-65; NYISO Staff Recommendations at 4 and 61-63; and Smith Affidavit at ¶ 20.

[62] *See, e.g.*, IPPNY Protest at 12-15; and Ravenswood Protest at 12-16.

the risks attendant to investing in a 2-hour BESS unit in New York.[63] Such parties advocate for upward adjustments to the proposed WACC value for a 2-hour BESS unit in combination with downward adjustments to the proposed 20-year amortization period.[64]

The NYISO demonstrated that the proposed WACC for a 2-hour BESS unit was determined after careful consideration of both general risks related to investment in new capacity supply resources in New York, as well as specific market and technology risks associated with investment in a 2-hour BESS unit in New York.[65] The NYISO considered general market risks such as the uncertainty of future revenues, potential future changes to market rules and regulatory policies, as well as potential future changes in system topology, the resource mix, and load requirements.[66] The recommended WACC value also considered certain risks specific to investment in a 2-hour BESS unit in New York. These technology-specific risks included the relative nascent stage of BESS development and the potential for future BESS technologies to benefit from technological advancements that improve efficiency and operating capability, as well as uncertainty regarding future market dispatch and operating modes given changing conditions over time in response to the ongoing transition of New York's electric grid to a clean energy system.[67] The recommended WACC value for a 2-hour BESS unit also accounts for the uncertainty of future CAF values, recognizing that such future CAF values cannot be accurately

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[63] *Id*.

[64] *See, e.g.*, IPPNY Protest at 12-19; and Ravenswood Protest at 12-16.

[65] 2025-2029 DCR Filing at 53-60; Independent Consultant Report at 20, 38-40, 48, 53-54, 57-74 and Appendix B; AG Affidavit at ¶ 48, 50, 113-115 and 121-145; AG Supplemental Affidavit at ¶ 4-16; and NYISO Staff Recommendations at 20 and 24-28.

[66] 2025-2029 DCR Filing at 53-56; Independent Consultant Report at 58-59; AG Affidavit at ¶ 48, 126-127 and 129; AG Supplemental Affidavit at ¶ 4-6, 9-11 and 16; and NYISO Staff Recommendations at 25-27.

[67] 2025-2029 DCR Filing at 53-56; Independent Consultant Report at 64-65; AG Affidavit at ¶ 48 and 126-127; and AG Supplemental Affidavit at ¶ 9, 11 and 16.

forecasted at this time and may increase or decrease from year-to-year based on actual changes in system conditions.[68]

Based on consideration of the above-described factors, investing in a 2-hour BESS unit presents increased risk compared to a fossil-fired frame turbine.[69] As a result, the proposed WACC value for a 2-hour BESS unit is higher than the value for a fossil-fired frame turbine. The increased WACC value for a 2-hour BESS unit includes COE and COD values that are each 50 basis points higher than the respective values developed for a fossil-fired frame turbine to account for the relatively higher investment risk posed by a 2-hour BESS unit.

Certain parties provide alternative assessments to advocate for increasing the nominal after-tax WACC for a 2-hour BESS unit to values in the range of approximately 12% to 14%, in combination with reducing the proposed amortization period to a value of 17-18 years.[70] The analyses submitted by opposing parties do not provide a credible basis for adjustment to the NYISO's proposed financial parameters and should be rejected by the Commission.

The alternative analyses provided by opposing parties include a variety of concerns that undermine the veracity and probative value thereof.[71] These issues result in an overstatement of the risk attendant to investment in a 2-hour BESS unit in New York and associated financial parameters.[72]

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[68] 2025-2029 DCR Filing at 22-23 and 53-56; Independent Consultant Report at 58-59 and 62-68; AG Affidavit at ¶ 48-50, 114-115, 124-129, 134 and 138; AG Supplemental Affidavit at ¶ 11 and 16; NYISO Staff Recommendations at 25-27 and 61; and Smith Affidavit at ¶ 19 and 21.

[69] 2025-2029 DCR Filing at 53-60; Independent Consultant Report at 20, 38-40, 48, 53-54, 57-74 and Appendix B; AG Affidavit at ¶ 48, 50, 113-115 and 121-145; AG Supplemental Affidavit at ¶ 11-13 and 16; and NYISO Staff Recommendations at 20 and 24-28.

[70] *See*, *e.g.*, IPPNY Protest at 14-15 and Exhibit B, ¶ 43 and 62.

[71] AG Supplemental Affidavit at ¶ 3 and 17-32.

[72] *Id.* at ¶ 3 and 18-32.

The alternative evaluations rely on conclusory statements without supporting empirical evidence. Opposing parties fail to provide substantiation or supporting information of the "observations" and confidential communications relied on to support the alternative values. Reliance on conclusory observations absent empirical data or other substantiation provides no assurance that the observations relied on are unbiased or appropriately account for the system conditions required in establishing the ICAP Demand Curves.[73]

The alternative assessments of the appropriate COD value include the use of duplicative adjustments that result in producing excessive and unreasonable results.[74] The alternatives also exclude consideration of relevant market data and ignore the existence of countervailing factors that may mitigate investment risks, introducing unnecessary upward bias to the resulting outcomes.[75] Certain parties also cite recent debt financings by generation assets that exhibited debt costs ranging from 9% to 9.5% to support claims that the NYISO's proposed COD value is too low.[76] However, such data fails to provide critical information regarding such financings, including the associated capital structures. Debt costs are directly impacted by the capital structure at issue. Absent such information, it is unclear whether such debt costs have any

[73] *Id.* at ¶ 18 and 27-31. In establishing the ICAP Demand Curves, the Services Tariff requires that the costs and revenues of the hypothetical peaking plant reflect system conditions slightly beyond the applicable minimum requirements (*i.e.*, conditions reflecting a level of available capacity supply equal to the applicable minimum requirement, plus the MW value of the applicable peaking plant). Risks and revenue expectations under such conditions are different than the risks faced by new investment under current system conditions reflecting greater levels of excess capacity. *See*, *e.g.*, Services Tariff § 5.14.1.2.2; 2025-2029 DCR Filing at 2-3 and 30; and AG Supplemental Affidavit at ¶ 18 and 26.

[74] AG Supplemental Affidavit at ¶ 19-20.

[75] *Id*. at ¶ 16, 21-23 and 32.

[76] *See*, *e.g.*, Ravenswood Protest at Affidavit of Richard Roloff, pp. 19-21 .

relevance to the appropriate capital structure assumed in developing the proposed WACC value for a 2-hour BESS unit.[77]

As demonstrated by the foregoing, the alternative analyses provided by opposing parties contain assumptions and omissions that result in producing unreasonably excessive results. The Commission should reject such alternative analyses and accept the NYISO's proposed financial parameters without modification.

Opposing parties implicitly contend that separate WACC values should have been developed for the various BESS unit durations evaluated as part of the 2025-2029 DCR.[78] These parties appear to believe that, if such duration-specific values had been developed, the WACC value for a 2-hour BESS unit would increase.[79] Such claims represent a fundamental misunderstanding of the proposed WACC value for a 2-hour BESS unit. The proposed value was developed based on consideration of the risks attendant to investment in a 2-hour BESS unit.[80] Although development of duration-specific WACC values was deemed unnecessary for the 2025-2029 DCR, if undertaken, such exercise could potentially result in lower WACC values for longer-duration BESS technology options if the risks of such investments were demonstrated to be lower than a 2-hour BESS unit. The development of duration-specific WACC values for BESS units would not, however, be expected to result in an increase to the proposed value for a 2-hour BESS unit.[81] Regardless, even if duration-specific WACC values were developed, the potential for downward adjustment of the WACC values for longer-duration BESS units would

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[77] 2025-2029 DCR Filing at 55; AG Affidavit at ¶ 133; and AG Supplemental Affidavit at ¶ 26.

[78] *See*, *e.g.*, IPPNY Protest at 19-20; and Ravenswood Protest at 14-16.

[79] *Id.*

[80] 2025-2029 DCR Filing at 55-56; Independent Consultant Report at 64-65; and AG Affidavit at ¶ 127.

[81] *Id.*

not change the outcome of this reset because longer-duration BESS units would remain significantly more costly than a 2-hour BESS unit.[82]

Certain parties also contend that the NYISO's proposed financial parameters fail to account for potential future declines in market revenues for a 2-hour BESS unit.[83] The NYISO continues to collaborate with its stakeholders to develop market design enhancements that seek to ensure the maintenance of proper pricing signals and incentives for the resource capabilities necessary to meet future system needs presented by the ongoing transformation of New York's electric grid to a clean energy system. For example, the NYISO has developed a proposal to implement incremental reserve procurement requirements in response to uncertainties in forecasting load requirements and energy production from weather-dependent supply resources.[84] The NYISO has also developed a proposed construct to implement a more dynamic determination of its reserve requirements to better align with changing system conditions (*e.g.*, load requirements, transmission topology changes, resource fleet changes, and consideration of correlated losses of multiple supply resources).[85] Such market design enhancements will impact future market outcomes. Notably, actual changes in market prices over time, such as reserves, are incorporated into the ICAP Demand Curves by the tariff-prescribed annual updating process.

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[82] *Id.*

[83] *See, e.g.*, IPPNY Protest at 29; and Ravenswood Protest at 13.

[84] *See, e.g.*, NYISO, *Balancing Intermittency* (presented at the October 31, 2024 Management Committee meeting), available at: https://www.nyiso.com/documents/20142/47773760/Balancing%20Intermittency_MC_10312024_v1.pdf. Stakeholders unanimously approved pursuing NYISO Board and regulatory approval of the proposed enhancements.

[85] *See, e.g.*, NYISO, *Dynamic Reserves Market Design* (presented at the December 18, 2024 Management Committee meeting), available at: https://www.nyiso.com/documents/20142/48652880/2024-12-18%20Dynamic%20Reserves%20MC.pdf. Stakeholders unanimously approved proceeding to seek NYISO Board and regulatory approval of the proposed dynamic reserves construct.

The Commission has noted that "capturing the impact of market rule changes … 'was a primary motivation for the new annual updating process.'"[86] The annual updating process captures actual changes in Energy and Ancillary Services prices over time, avoiding the need for speculative adjustments that seek to predict such future outcomes.[87]

The proposed WACC value for a 2-hour BESS unit reflects careful consideration of relevant information and appropriately accounts for the risks of investing in a new 2-hour BESS unit in New York. Accordingly, the Commission should accept the NYISO's proposed value without modification.

4. The NYISO Carefully Considered and Appropriately Accounted for Potential Future BESS Technological Advancements

Certain parties allege that the NYISO's proposal fails to consider the potential impacts of projections that future costs for BESS technologies could decline over time.[88] These stakeholders contend that the Commission should direct the NYISO to include an upward adjustment to the proposed WACC value and/or downward adjustment to the proposed 20-year amortization period for 2-hour BESS units to account for the alleged impacts of such potential future cost declines.[89]

The future price forecasts relied upon by these parties do not provide a credible basis for modifying the NYISO's proposal.[90] The price forecasts relied on are based on assumptions that technological advancements will place substantial downward pressure on future BESS

[86] 2017-2021 DCR Order at P 166.

[87] AG Supplemental Affidavit at ¶ 16.

[88] *See, e.g.*, IPPNY Protest at 15-19; and Ravenswood Protest at 13.

[89] *See, e.g.*, IPPNY Protest at 15-19.

[90] 2025-2029 DCR Filing at 32-33; Independent Consultant Report at 62-64; AG Affidavit at ¶ 126; and NYISO Staff Recommendations at 25-27.

technology costs.[91] However, such forecasts often overstate potential cost declines and can diverge significantly from actual market prices for technologies. In fact, despite forecasts of future cost declines for BESS technologies, recent studies in New York indicate that BESS unit costs have increased approximately 40% compared to cost projections in 2021, including an increase of nearly 20% between December 2022 and March 2024.[92]

Inclusion of assumptions regarding potential future technology costs in longer-term planning studies also does not support the credibility of including such speculative assumptions in determining the estimated cost to construct new BESS units in New York during the 2025-2029 reset period.[93] Use of potential future costs in long-term planning studies are often intended to help inform future resource build scenarios through relative cost differences in various resource types rather than seeking to precisely identify the actual costs of a particular project. This is done to help assess transmission infrastructure needs for such potential future resource build outs. In contrast, as required by the Services Tariff, the DCR must estimate "the ***current localized levelized embedded cost to construct a peaking plant*** …" in each capacity region not simply a relative or potentially indicative future cost value.[94]

DCRs are conducted every four years to ensure that the ICAP Demand Curves evolve over time to capture, among other factors, changes in market conditions, regulatory requirements, technology options, and the costs of such technology options. Suggested reliance on speculative and unsubstantiated forecasts of potential changes in future technology costs does

[91] *Id.*

[92] 2025-2029 DCR Filing at 32.

[93] *See, e.g.*, IPPNY Protest at 16-17.

[94] Services Tariff § 5.14.1.2.2 (emphasis added).

not produce reasonable outcomes and should be rejected by the Commission. Future resets are the appropriate forum for incorporating actual changes in costs over time.

The NYISO's proposal appropriately accounts for the potential impacts resulting from technological advancement for BESS units.[95] The proposed WACC value for a 2-hour BESS unit specifically considered the relative nascent state of the BESS technology development.[96] In doing so, the proposed value reflects consideration of the potential for future technological advancements to improve the efficiency of future BESS units and impact future market revenue earnings for BESS units constructed during the 2025-2029 reset period.[97]

The NYISO's proposal appropriately reflects consideration of the potential impacts of future technological advancement in a credible and reasonable manner. The Commission should not countenance attempts to impose speculative adjustments that would undermine the reasonableness of the NYISO's proposal.

5. The NYISO Carefully Considered Available Information and Guidance in Assessing the Appropriate Treatment of the ITC Benefit

In comments to the NYISO Board, certain stakeholders objected to including the costs related to the generator lead for a 2-hour BESS unit as part of the eligible basis for determining the applicable ITC benefit.[98] In accordance with the procedures set forth in the Services Tariff, the NYISO Board carefully considered all stakeholder positions in determining the results for the

[95] 2025-2029 DCR Filing at 33 and 54; Independent Consultant Report at 62-64; AG Affidavit at ¶ 126; AG Supplemental Affidavit at ¶ 9, 11 and 16; and NYISO Staff Recommendations at 25-27.

[96] *Id.*

[97] *Id.*

[98] Independent Power Producers of New York, Inc., *Comments on Proposed NYISO Installed Capacity Demand Curves for 2025-2029 and Request for Oral Argument* at 17-21 (October 8, 2024), available at: https://www.nyiso.com/documents/20142/47501478/IPPNY-Comments.pdf ("IPPNY Board Comments").

2025-2029 DCR to be filed with the Commission.[99] After careful assessment of stakeholder positions regarding the application of the ITC to the generator lead costs for a 2-hour BESS unit, the NYISO Board directed exclusion of such costs from the eligible basis for the ITC benefit.[100] Certain stakeholders oppose this aspect of the NYISO's proposal and request that the Commission direct the NYISO to revise the assumed ITC benefit to include the costs of the generator lead for a 2-hour BESS unit.[101]

The comments submitted to the NYISO Board cited relevant Internal Revenue Service ("IRS") guidance, including past notices, an IRS Chief Council Advice memorandum, and certain ITC-related regulations.[102] The NYISO Board requested that NYISO staff conduct additional due diligence to review the feedback received on the application of the ITC to the generator lead costs for a 2-hour BESS unit. NYISO staff reviewed the information submitted by stakeholders and engaged tax counsel with extensive experience in ITC-related matters.

ITC eligibility matters are fact-specific assessments that, as acknowledged by the 2025-2029 DCR Filing, could potentially present divergences of opinion.[103] The additional due diligence conducted by NYISO staff identified that asset ownership alone would not be determinative of ITC eligibility and, instead, the IRS will assess the purpose and function of

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[99] Services Tariff § 5.14.1.2.2.4.

[100] 2025-2029 DCR Filing at 44-45; Independent Consultant Report at 44-45; 1898 & Co. Affidavit at ¶ 35-37; NYISO Staff Recommendations at 21; and Smith Affidavit at ¶ 27 and Exhibit A.

[101] *See, e.g.*, Consumer Stakeholders Comments and Protest at 23-28; and NYSERDA Protest at 6-17.

[102] IPPNY Board Comments at 18-20. Notably, the IPPNY Board Comments cited certain then draft regulations that were subsequently finalized by the IRS after submission of the 2025-2029 DCR Filing. The recently finalized regulations are consistent with the draft regulations considered as part of NYISO staff's additional due diligence regarding the application of the ITC to the generator lead costs for a 2-hour BESS unit.

[103] 2025-2029 DCR Filing at 45; 1898 & Co. Affidavit at ¶ 37; and Smith Affidavit at ¶ 27.

various interconnection and other project-related equipment in determining eligibility. The generator lead is located beyond the step-up transformer for a 2-hour BESS unit and does not involve any further adjustments to the characteristics of energy produced by the unit. Thus, the generator lead serves to merely transport the final product produced by a 2-hour BESS unit to the transmission system. As a result, it is not likely to be classified as integral to the energy production function and, instead, is likely to be deemed "transmission/distribution equipment" that is not eligible for the ITC.[104]

This conclusion is consistent with the recently finalized IRS regulations cited by opposing parties.[105] The regulations expressly provide that power conditioning and transfer equipment that is otherwise deemed an integral part of eligible energy equipment "does not include transmission or distribution lines."[106] The NYISO's proposal reasonably concluded that the generator lead for a 2-hour BESS unit would likely be deemed a transmission or distribution line that is expressly excluded from the eligible basis for the ITC benefit.

## III. CONCLUSION

The NYISO respectfully requests that the Commission: (1) issue an order on or before January 28, 2025 accepting the NYISO's proposal without modification; and (2) establish an effective date of January 29, 2025 for the tariff revisions proposed in this proceeding.

As further detailed in the 2025-2029 DCR Filing, timely action by the Commission is necessary to facilitate the NYISO's completion of its required activities in advance of the upcoming capacity auctions for the 2025 Summer Capability Period (*i.e.*, the first period covered

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[104] *See* 26 C.F.R. § 1.48-9(f)(3); Consumer Stakeholders Comments and Protest at 25-26; and NYSERDA Protest at 8-9.

[105] *See*, *e.g.*, Consumer Stakeholders Comments and Protest at 25-27; and NYSERDA Protest at 8-9.

[106] 26 C.F.R. § 1.48-9(f)(3).

by the updated ICAP Demand Curves proposed in this proceeding).[107] Timely Commission action will also ensure marketplace certainty as to the ICAP Demand Curves that will apply beginning with the 2025 Summer Capability Period. Such certainty will improve the efficient and informed operation of both NYISO-administered capacity auctions and bilateral market trading activity.[108]

Respectfully submitted,
*/s/ Garrett E. Bissell*
Garrett E. Bissell, Assistant General Counsel
New York Independent System Operator, Inc.

Dated: January 3, 2025

cc:

| | |
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[107] 2025-2029 DCR Filing at 70-71.

[108] *Id*.

**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 3rd day of January 2025.

*/s/ Stephanie Amann*

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