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January 5, 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., 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-___-000

In accordance with Section 205 of the Federal Power Act ("FPA"),[1] and Part 35 of the regulations of the Federal Energy Regulatory Commission ("the Commission" or "FERC"), the New York Independent System Operator, Inc. ("NYISO") respectfully submits proposed tariff revisions (the "NYISO Proposal") to its Market Administration and Control Area Services Tariff ("Services Tariff"). The purpose of the NYISO Proposal is to enhance the currently effective "buyer-side" capacity market power mitigation measures ("BSM Rules"), improve the NYISO's valuation of resources' capacity contributions, and enhance the procedures for defining Installed Capacity ("ICAP") Demand Curves to better reflect a rapidly changing resource mix.[2]

The NYISO Proposal reasonably balances consumer and investor interests. It is the product of an extensive shared governance process that resulted in a Management Committee measure that was approved by 82.03% of NYISO stakeholders. The NYISO Proposal was approved by stakeholders with strong backing across all five stakeholder sectors, including unanimous support from New York State entities, New York City, municipal interests and the New York Transmission Owners, and significant support from both existing capacity suppliers and consumer interests. The independent market monitoring unit for the NYISO, Potomac Economics ("MMU") played a major role in developing the NYISO Proposal and the NYISO anticipates that the MMU will submit supportive comments.

The NYISO Proposal offers a durable resolution to years of tension between the Commission's obligation to protect the NYISO-administered capacity market from "buyer-side capacity market power" and New York State's authority to address New York's resource mix under Section 201 of the FPA. The NYISO Proposal will do so without departing from precedents holding that the markets must be protected against both the "under-mitigation" and "over-mitigation" of buyer-side market power. It therefore minimizes litigation risk and uncertainty.

[1] 16 U.S.C. § 824d (2021).

[2] Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article 2 of the Services Tariff.

The NYISO Proposal is just, reasonable, and not unduly discriminatory. It should be accepted even though alternative arrangements might be imagined that could also be just and reasonable under Section 205 of the FPA,[3] and even though it may differ in some ways from the approaches taken in neighboring regions.[4]

Because the NYISO Proposal will have a significant impact on projects seeking to enter the capacity market as part of the Class Year 2021 interconnection study process, the NYISO respectfully requests that the Commission issue an order accepting this filing within sixty days without imposing conditions or initiating settlement, hearing, technical conference, or deficiency procedures. As noted, the NYISO Proposal is the result of extensive stakeholder input within the NYISO's shared governance process and reflects broad supermajority support from stakeholders.

The Commission should make all of the tariff revisions proposed herein effective after the standard statutory sixty-day notice period, *i.e.*, on March 6, 2022. This would allow sufficient time for the NYISO to implement its proposed revisions to the BSM Rules starting in Class Year 2021. As discussed below in Section VII, it will take additional time to develop the non-tariff implementation details and technical specifications, and to test and deploy software, pertaining to the marginal accreditation market design. But it is, nevertheless, necessary to make all of the proposed revisions in this filing effective on March 6, 2022 so that the NYISO can complete the required work to implement the accreditation design before a significant number of impacted resources begin participating in the market. The requested effective date will provide clear guidance to the NYISO and give all stakeholders the greatest possible certainty moving forward.

I. SUMMARY

The NYISO Proposal would: (i) remove certain resources, "Excluded Facilities," from being defined as "Examined Facilities" and reviewed under the BSM Rules if they serve the goals of New York State's Climate Leadership and Community Protection Act ("CLCPA");[5] (ii) adopt a marginal capacity accreditation market design to improve the accuracy of the capacity values assigned to all Installed Capacity Suppliers from a resource adequacy perspective; and (iii) adjust the rules governing the ICAP to Unforced Capacity ("UCAP") translation that is done for the peaking plant used to set the ICAP Reference Price for the ICAP Demand Curves in each quadrennial reset.

[3] *See, e.g.*, *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) ("FERC is not required to choose the best solution, only a reasonable one."). In addition, FERC plays a "passive and reactive" role when reviewing Section 205 filings. *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108, 114 (D.C. Cir. 2017). A more detailed discussion of the review standard is set forth in Section V, *infra*.

[4] *See, e.g.*, *Calpine Corp. v PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 at n754 (2020) ("Specifically, with regard to the NYISO capacity market rules, the Commission has repeatedly noted the differences between the PJM and NYISO capacity markets making different rules appropriate."). A more complete discussion of the Commission's regional differences precedent is in Section VI, *infra*.

[5] S.B. 6599, 2019 Leg., 242nd Sess. (N.Y. 2019) (codified as Ch. 106, L. 2019).

A. Excluding Resources that Satisfy CLCPA Goals from the BSM Rules

The NYISO recognizes that the application of the current version of the BSM Rules to state-supported resources is increasingly viewed by both state and federal regulators as costly to consumers, resulting in inefficient outcomes that are ultimately counterproductive. In the last NYISO Class Year process, some new storage resources were subject to an Offer Floor. If the BSM Rules do not evolve, they are likely to more significantly interfere with CLCPA policies by mitigating new entrants that are necessary to the achievement of New York State's policy objectives. In particular, there is cause for concern that the BSM Rules will result in over-mitigation of new intermittent and storage resources entering the capacity market as part of the NYISO's Class Year 2021 interconnection cost allocation process. Over-mitigation of such resources would result in needlessly higher costs to consumers, and market inefficiencies.

The NYISO Proposal would avoid these harms by revising the BSM Rules to exclude Resources and Unforced Capacity Deliverability Rights ("UDR") projects that are "qualified to satisfy the goals specified in the CLCPA."[6] This change will help to ensure that the NYISO is not engaging in over- or under-mitigation, while accommodating New York State's reserved authority under Section 201 of the FPA to address its resource mix. It is just, reasonable, and not unduly discriminatory to exclude resources that serve CLCPA objectives from the BSM Rules because the statute, and state programs adopted thereunder, are expected to be the principal driver of changes to the resource mix in New York State over the next two decades.

The NYISO Proposal reconciles Chairman Glick's and Commissioner Clements' past statements urging the NYISO to collaborate with stakeholders to develop a Section 205 filing to narrow the BSM Rules with the need for the NYISO to retain an effective safeguard against buyer-side market power.[7] The analysis supporting this filing shows that, even with Excluded Facilities no longer being subject to the BSM Rules, there will not be significant price suppression in the NYISO-administered capacity auctions. As discussed below at Section V.A, this is a function of expected market conditions that are specific to New York and is based on the NYISO having more robust capacity accreditation improvements in place. The core components of the

[6] Proposed definition of "Excluded Facilities" in Services Tariff § 23.2.1.

[7] *See, e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,081 (2021); Glick Concurring ("I urge NYISO and its stakeholders to move expeditiously to replace these buyer-side market power mitigation rules with a model that moves beyond minimum offer price rules as a means of mediating the interaction between state policies and wholesale markets. In the event NYISO and its stakeholders cannot settle upon a replacement for its current buyer-side market power rules, then we will be left with little choice but to step in and establish such rules ourselves.") *N.Y. State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 174 FERC ¶ 61,110 (2021); Clements Concurring ("I look forward to engaging with my colleagues to work with the State of New York, NYISO, and the stakeholder community to re-examine the current capacity market construct to find a durable solution that yields just and reasonable rates for NYISO customers."); s*ee also Technical Conference Regarding Resource Adequacy in the Evolving Electricity Sector*, Docket No. AD21-10-000, Tr. at 9:10-20 (Mar. 23, 2021) (Comments of Chairman Richard Glick).

BSM Rules would remain in effect to address potential exercises of buyer-side market power by entrants that do not qualify as Excluded Facilities in the same way that they do today.

Thus, the NYISO Proposal should be legally durable. It will resolve the principal conflict between New York State policy and the FPA by preventing the BSM Rules from impeding CLCPA objectives while allowing the NYISO-administered capacity market to continue to ensure competitive market outcomes and support reliability. Accepting the NYISO Proposal will enable the NYISO, New York stakeholders, and investors to move forward with the clean energy transition with greatly reduced regulatory risks. Accepting the NYISO Proposal in full will also benefit New York's electricity consumers by continuing to shift financial risks away from consumers and toward developers, investors and owners.

B. Introducing a Marginal Capacity Accreditation Market Design

The NYISO seeks to introduce a major market design enhancement: valuing capacity based on marginal accreditation. This improved approach will more accurately value ICAP Suppliers' contributions to resource adequacy in the NYISO's prompt ICAP market as more duration-limited and intermittent capacity resources are added to the system. A marginal approach will incentivize efficient investments to attract and retain the necessary generation to maintain resource adequacy. It will also avoid encouraging overbuilding of certain classes of resources in locations where their entry would provide no incremental reliability contribution. Marginal accreditation is a critically important market design improvement in its own right. Moreover, a more robust accreditation design is necessary to justify relieving Excluded Facilities from mitigation. The economic analysis in Attachments III and III-A to this filing letter, which show that the capacity markets will continue to produce competitive outcomes after the BSM Rules are revised, assumes that such a capacity accreditation system will be in place. As discussed in the Mukerji Affidavit and Section V.B.2 below, the NYISO believes that its marginal accreditation design is the best option for the NYISO-administered capacity market.

As discussed below in Section VII, the NYISO anticipates that it will develop additional non-tariff implementation details and technical specifications related to marginal capacity accreditation with stakeholders in the NYISO's shared governance process. The NYISO will also design and test marginal accreditation-related software. These additional steps will be finalized before the marginal accreditation market design would impact capacity auctions held for the Capability Year that commences on May 1, 2024. Implementation details and technical specifications are properly left to be addressed by the NYISO's manuals and other ISO Procedures. As with other significant market design changes,[8] the NYISO would describe the core principles, purpose and key features of marginal accreditation in its tariff, but will subsequently develop detailed procedures and software to implement the market design after the

[8] *See, e.g.*, *Astoria Generating Co., L.P., et. al. v. N.Y. Indep. Sys, Operator, Inc.*, 139 FERC ¶ 61,244 at P 50 (2012) (requiring the NYISO to provide additional transparency, including examples, narratives, and other details, regarding the application of the BSM Rules but allowing this information to be provided outside of the Services Tariff); *Cal. Indep. Sys. Operator*, 156 FERC ¶ 61,152 at P 15 (2016) [letter order] (accepting CAISO's commitment to work to update CAISO's business practice manual to include numerical examples illustrating price calculations as adequately addressing stakeholder concerns).

tariff amendments have been accepted by the Commission.[9] The tariff revisions included in this filing are just and reasonable, complete, and ready to be accepted by the Commission now.

C. ICAP Market Demand Curve-Related Changes

ICAP Demand Curves are computed based on "reference point prices," which ultimately are translated to UCAP reference point prices as the NYISO procures UCAP rather than ICAP in its capacity market auctions. The NYISO's current practice, in converting to a UCAP reference point price, is to use the system-wide or applicable Locality-wide translation factor.

The NYISO Proposal would modify this approach and calculate the UCAP reference point price using the derating factor of the specific peaking plant used to establish a given reference point price for the Capability Year beginning May 1, 2024. The change will account for the expectation of substantial market entry by intermittent resources, as well as other resources that have high derating factors, and will help to ensure that the ICAP Demand curves do not send inefficient investment signals that could encourage market entry of the type that is not warranted.

The NYISO also notes, for informational purposes, that it expects CLCPA mandates, and the tariff changes made in this filing to create new risk factors that will affect the estimated gross costs of the peaking unit used in future ICAP Demand Curve resets. The NYISO and its independent consultant are already required to consider such risks under the Services Tariff and will do so in future quadrennial ICAP Demand Curve resets.

D. Supporting Affidavits and Analyses

The NYISO Proposal is amply supported by economic analysis and expert affidavits.

The Hibbard/Wu Affidavit, included as Attachment III to this filing letter, describes the findings of a study performed by the Analysis Group, Inc. (the "AGI Study") to model the future operation of the NYISO capacity market, assuming that the NYISO implements the tariff revisions proposed in this filing. Analysis Group concluded that the capacity market would continue to produce competitive market outcomes and provide financial incentives for the retention and addition of resources needed to maintain power system reliability. The AGI Study is attached to the Hibbard/Wu Affidavit as Attachment III-A to this filing letter.

The Mukerji Affidavit, included as Attachment IV to this filing letter, describes the evolving tensions between the BSM Rules and the CLPCA, adopts MMU and NYISO analyses justifying the adoption of a marginal accreditation market design, endorses the results of the AGI

[9] The Commission has held that ISOs/RTOs should be allowed to include such implementation details in their manuals and procedures "in light of the multitude of occasions in tariff administration that require the exercise of technical or operational expertise." *ISO New England Inc.*, 137 FERC ¶ 61,112, at P 19 (2011). The Commission understands that "study assumptions and parameters are likely to change over time" in complex ISO/RTO managed processes and thus that "rigid specifications or formulas set out in the Tariff" would be problematic because they would make it more difficult "to adapt to changing circumstances." *Sw. Power Pool, Inc.*, 136 FERC ¶ 61,050, at P 37 (2011).

Study, and supports the NYISO's ICAP Market Demand Curve-related change. The MMU and NYISO accreditation analyses are provided in Attachments V, VI, and VII to this filing letter.

II. COMMUNICATIONS

All communications, pleadings, and orders with respect to this proceeding should be directed to the following individuals:

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III. LIST OF DOCUMENTS SUBMITTED

The NYISO submits the following documents with this filing letter:

1. A blacklined version of the Services Tariff revisions proposed in this filing ("Attachment I");

2. A clean version of the Services Tariff revisions proposed in this filing ("Attachment II");

3. Affidavit of Paul J. Hibbard and Charles Wu ("Hibbard/Wu Affidavit") ("Attachment III"), including *Modifications to the BSM Construct in the NYISO Capacity Market: Analysis of Potential Capacity Market Competitiveness and Reliability* Outcomes, Paul Hibbard and Charles Wu (Dec. 2021) ("Attachment III-A");

4. Affidavit of Rana Mukerji ("Mukerji Affidavit") ("Attachment IV");

5. *NYISO Capacity Accreditation: Continued Discussion of Marginal and Average Approaches*, Potomac Economics (Aug. 30, 2021) ("Attachment V");

6. *NYISO Capacity Accreditation Consumer Impact Analysis*, Potomac Economics (Nov. 2, 2021) ("Attachment VI"); and

7. *Consumer Impact Analysis: Comprehensive Mitigation Review Proposal*, Tariq N. Niazi, Senior Manager, Consumer Impact Analysis (Nov. 8, 2021) ("Attachment VII").

IV. BACKGROUND

A. The History of the BSM Rules, Accommodating New York State's CLCPA Priorities, and Evolving Market Conditions in New York

1. The NYISO-Administered Capacity Market

The NYISO administers several prompt ICAP market auctions that enable Load-Serving Entities ("LSEs") to procure their capacity requirements on a seasonal, six-month Capability Period, on a monthly basis for any remaining months within a Capability Period, or at an ICAP Spot Market Auction for the upcoming month. All capacity transactions that clear the ICAP Spot Market Auction result in supplier obligations and penalties for non-delivery. The objective of the capacity markets is to provide adequate revenues to attract new and retain existing resources to meet resource adequacy criteria going forward. As the Commission has repeatedly held, "the capacity market is designed to encourage new investment, retain existing needed capacity, and signal when capacity is sufficient or when additional resources are needed."[10]

Historically, the NYISO's prompt capacity market has resulted in most of the qualified ICAP Supply megawatts that are available to participate in the monthly ICAP Auctions offering this capacity. The relatively short-term focus of the NYISO's capacity market design means that offered capacity is existing capacity that is actually available to provide capacity and energy for the upcoming month rather than a forward commitment to provide capacity three years in the future as in the PJM Interconnection, L.L.C. ("PJM") and ISO New England, Inc. ("ISO-NE") markets. As noted below in Section V.B, this is a significant distinction that contributes to marginal accreditation being an appropriate choice for the NYISO market design. The NYISO-administered capacity market works in tandem with the energy and ancillary services markets to help meet long-term resource adequacy objectives in the most cost-effective manner. Together, the markets have been designed to send price signals for sufficient investment to meet reliability criteria using the most economic resources.

[10] *N.Y. State Pub. Serv. Comm'n, v. N.Y. Indep. Sys. Operator, Inc.*, 173 FERC ¶ 61,060 at P 19 (2020) ("NYISO Energy Storage Rehearing Order"); *citing* 153 FERC ¶ 61,022 (2015); 170 FERC ¶ 61,119 at P 4 & n.11; *see also, N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at P 103 (2008) (accepting buyer-side market power mitigation because "[m]arkets require appropriate price signals to alert investors when increased entry is needed" and "these necessary price signals may never be seen if the Commission allows price suppression.").

2. Relevant Buyer-Side Mitigation Principles and Precedent

The BSM Rules were first implemented in 2008[11] to protect the capacity market against buyer-side market power. The BSM Rules originally applied only to new entrants in New York City (NYISO Load Zone J). They were subsequently extended to apply to new entrants in the Load Zone G-J Locality, *i.e.*, the "Lower Hudson Valley." These two Localities are referred to as "Mitigated Capacity Zones." The NYISO has a tariff mechanism that could trigger the creation of new Mitigated Capacity Zones if certain transmission constraint criteria are met.[12] In late 2019, the NYISO conducted the required quadrennial study and confirmed that there was no justification for creating a new Locality, and thus no justification for expanding the scope of the BSM Rules, at that time.

Capacity market prices, like all Commission-jurisdictional rates, can only be lawful under the FPA if they are just and reasonable. The Supreme Court's seminal *Hope* decision held that the just and reasonable standard requires that "[t]he rate-making process under the Act, i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests."[13] When market mechanisms are used to set Commission-jurisdictional prices, the Commission relies on market power monitoring and mitigation measures to ensure that the legally-mandated balance is maintained.[14]

For a brief period prior to their initial implementation, the BSM Rules were structured to apply only to "net buyers" that sought to exercise buyer-side market power.[15] However, the "net buyer" limitation was almost immediately abandoned because it was determined that such a standard would be unworkable and would be vulnerable to gaming.[16] Just as importantly, the Commission concluded that "all uneconomic entry has the effect of depressing prices below the

[11] *N.Y. Indep. Sys. Operator, Inc.*, 118 FERC ¶ 61,182, *order on reh'g*, 120 FERC ¶ 61,024 (2007), *order on reh'g*, 122 FERC ¶ 61,211 (2008).

[12] *See* discussion in Section II.B., *infra*.

[13] 320 U.S. 591, 603 (1944).

[14] *See Tejas Power Corp. v. FERC*, 908 F.2d 998 1004 (D.C. Cir. 1990) ("In a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable, and specifically to infer that price is close to marginal cost, such that the seller makes only a normal return on its investment."); *see also Office of FERC Commissioner James Danly White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets*, (May 20, 2021) ("Danly White Paper"); *Office of FERC Commissioner James Danly White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets, First Supplement* (June 17, 2021) ("Danly First Supplement"); *Office of FERC Commissioner James Danly White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets, Second Supplement* (July 15, 2021) ("Danly Second Supplement").

[15] *N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 (2008).

[16] *See N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 29 ("defining net buyers raises significant complications and provides undesirable incentives for parties to evade mitigation measures.") (2008).

competitive level and . . . this is the key element that mitigation of uneconomic entry should address."[17] This holding has been cited in cases involving other regional capacity markets as well.

For the entire period since 2008, the Commission has upheld its early holding that the BSM Rules must guard against artificial price suppression associated with uneconomic entry regardless of whether a "net buyer" was involved. The Commission emphasized from the outset that preventing artificial price suppression was a necessary part of the balancing required by the *Hope* standard. For example, the Commission stated in 2008 that "while a strategy of investing in uneconomic entry and offering it into the capacity market at a low or zero price may seem to be good for customers in the short-run, it can inhibit new entry, and thereby raise price and harm reliability, in the long-run. Under the FPA, the Commission must ensure that rates are just and reasonable. The courts have long held that establishing just and reasonable rates involves a balancing of consumer and investor interests."[18] Multiple precedents from PJM and ISO-NE have reached the same conclusion. Courts have upheld these rulings on appeal. This filing refers broadly to this long line of Commission and judicial determinations, involving both the NYISO and other regions, as the "Artificial Price Suppression Precedents."

The Commission's specific implementation of this principle has not always been a "model of consistency."[19] The Commission sometimes narrowed and sometimes broadened the scope of buyer-side mitigation in New York and other markets.[20] But the Commission has consistently held for twelve years that the NYISO must take artificial price suppression seriously as a potential form of buyer-side market power.[21] The NYISO has been instructed to avoid

[17] *N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 29 (2008).

[18] *N.Y. Indep. Sys. Operator, Inc*., 122 FERC ¶ 61,211 at P103 (2008). *See also N.Y. State Pub. Serv. Comm'n, et al. v. N.Y. Indep. Sys. Operator, Inc*., 154 FERC ¶ 61,088 at P 31(reiterating the importance of balancing "the need to mitigate the exercise of buyer-side market power to ensure just and reasonable ICAP market prices with the risk of over-mitigating new entrants.")*;* *Consolidated Edison Co. of New York, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139 at P 4 (2015); *N.Y. Indep. Sys. Operator, Inc*., 143 FERC ¶ 61,217 at P 77 (2013) (noting that buyer-side market power mitigation rules must "appropriately balance the need for mitigation of buyer-side market power against the risk of over-mitigation.").

[19] Joint Statement of Chairman Glick and Commissioner Clements, Docket No. ER21-2582-000 (Oct. 19, 2021) at P 8.

[20] *Compare ISO New England Inc.*, 162 FERC ¶ 61,205 (2016) *with Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (June 2018 Order), *order establishing just & reasonable rate*, 169 FERC ¶ 61,239 (2019) (December 2019 Order), *order on reh'g & clarification*, 171 FERC ¶ 61,034, *order on reh'g & clarification*, 171 FERC ¶ 61,035, *order on reh'g & compliance*, 173 FERC ¶ 61,061 (2020), *order on compliance & clarification*, 174 FERC ¶ 61,036, *order vacating footnote*, 174 FERC ¶ 61,109 (2021).

[21] *See* Danly White Paper, Danly First Supplement, and Danly Second Supplement (making the observation that buyer-side market power in capacity markets with ICAP Demand Curves is not "classic" monopsony power abuse or predatory pricing but instead takes the form of artificial price suppression via sponsored entry).

"under-mitigation" of the potential price suppressing impacts of state policies.[22] Under-mitigation would ultimately harm long-term consumer interests by creating incentives that could undermine the competitive market, threaten reliability, and result in an over-reliance on cost-based "Reliability Must Run" Agreements or transmission expansion to maintain reliability.[23]

At the same time, the NYISO has also repeatedly been told that it must guard against the potential harms of "over-mitigation," which can unnecessarily disrupt investment signals and discourage entry by new resources, thereby also harming consumers,[24] and needlessly frustrating New York State policies. But preventing over-mitigation does not mean that all price suppression is *per se* unjust and unreasonable. For example, the Commission rulings from 2015 through 2020 in Dockets Nos. EL15-64 and ER16-1404 established that intermittent resources with limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices should not be subject to an Offer Floor under the BSM Rules. The only exception was that if the aggregated impact of large-scale entry by such resources would have a price-suppressive effect.[25] These rulings accepted the NYISO's currently-effective Renewable Exemption. [26]

Commission orders addressing a comparable limited exemption for renewable entry from ISO-NE's buyer-side mitigation rule reached a similar conclusion that price suppression was not *per se* unlawful if the Commission reasonably concluded some level of price suppression was

[22] *See, e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 (2008) at P 103 ("While a strategy of investing in uneconomic entry and offering it into the capacity market at a low or zero price may seem to be good for customers in the short-run, it can inhibit new entry, and thereby raise price and harm reliability, in the long-run. Under the FPA, the Commission must ensure that rates are just and reasonable. The courts have long held that establishing just and reasonable rates involves a balancing of consumer and investor interests.").

[23] *See, e.g.*, *N.Y. State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 173 FERC ¶ 61,060 (2020) ("NYISO Energy Storage Rehearing Order") ("[u]nder-mitigation of uneconomic entry can suppress capacity prices; over-mitigation discourages new entry" and that "both extremes jeopardize long-term consumer interests.") citing 122 FERC ¶ 61,211 at P 103 (finding the Commission has the statutory obligation to ensure prices are just and reasonable, which involves a balancing of customer and investor interests and preventing price suppression, which can harm customers' long-term reliability interests).

[24] *See, e.g.*, *New York State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,088 at P 31 (reiterating the importance of balancing "the need to mitigate the exercise of buyer-side market power to ensure just and reasonable ICAP market prices with the risk of over-mitigating new entrants."); *Consolidated Edison Co. of New York, Inc. v. N.Y. Indep. Sys. Operator, Inc*., 150 FERC ¶ 61,139 at P 4 (2015); *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 at P 77 (2013) (noting that buyer-side market power mitigation rules must "appropriately balance the need for mitigation of buyer-side market power against the risk of over-mitigation.").

[25] *See N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121 at PP 28, 48 (2020).

[26] *See* Letter Order, *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER16-1404-003 (Oct. 20, 2020).

permissible as part of a balancing of competing supplier and consumer interests.[27] This conclusion was upheld on appeal.[28]

As discussed below in Section V.A, the analysis supporting this filing demonstrates that relieving Excluded Facilities from mitigation under the BSM Rules will not result in significant artificial price suppression if robust capacity accreditation improvements are in place.

3. New York State's Clean Energy Policies and their Impacts on Capacity Resource Entry and Exit Decisions

The CLCPA is one of the most comprehensive and ambitious efforts to address climate change in the United States. It is based on a New York State determination that climate change is adversely affecting economic well-being, public health, natural resources, and the environment. The CLCPA launched a broad, economy-wide effort to address climate change. Some of the standards established by the CLCPA include: (1) reducing greenhouse gas ("GHG") emissions 85% over 1990 levels by 2050, with an incremental target of at least a 40% reduction by 2030; (2) producing 70% of electricity from renewable resources by 2030 and 100% from zero-carbon resources by 2040; (3) increasing energy efficiency by 23% over 2012 levels; (4) building 6 GW of distributed solar by 2025, 3 GW of energy storage by 2035, and 9 GW of offshore wind by 2035; and (5) electrification of the transportation sector, as well as water and space heating in buildings. The CLCPA directs the establishment of programs for the procurement of specific technologies, including the deployment of 6 GW of photovoltaic solar generation by 2025, 3 GW of energy storage resources by 2030, and at least 9 GW of offshore wind by 2035.[29]

New York State regulatory agencies have already taken numerous actions to advance the CLCPA's objectives. Various CLCPA-related regulations are now in place that will substantially impact the existing capacity resource mix as well as future investment. For example, in late 2020 the New York State Public Service Commission ("NYSPSC") expanded the existing state clean energy standard, which awards renewable energy credits to qualifying projects to help achieve the CLCPA's power sector emissions requirements. The NYSPSC's actions included the creation of a new "Tier 4" process to increase the penetration of renewable

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[27] In fact, the NYISO referenced the ISO-NE renewable exemption precedent in its April 7, 2020 compliance filing in Docket No. ER16-1404-002. See Compliance Filing and Request for Commission Action No Later Than June 8, 2020, New York Independent System Operator, Inc., filed April 7, 2020, at 8.

[28] *See NextEra Energy Resources, LLC v. FERC*, 898 F.3d 14 (D.C. Cir. 2018). The court stated: "FERC has, at various times, considered exemptions to the minimum offer price rule in other markets. *See* Remand Order at PP 32-34. In some cases, the Commission accepted an exemption, despite the potential for price suppression. *See, e.g.*, *New York State Pub. Serv. Comm'n*, 153 FERC ¶ 61,022 at P 10 (Oct. 9, 2015); *PJM Interconnection*, 135 FERC ¶ 61,022 at P 152 (Apr. 12, 2011). In some cases, the Commission rejected an exemption because of the potential for price suppression and market distortions. *See, e.g.*, *PJM Interconnection*, 135 FERC ¶ 61,022 at P 139; New England Complaint Order at PP 32-35; *New York Indep. Sys. Operator, Inc*., 122 FERC ¶ 61,211 at P 110 (Mar. 7, 2008)." 808 F.3d at 23.

[29] *See <https://climate.ny.gov/>*.

resources in New York City.[30] In September 2021, the New York State Energy Research and Development Authority ("NYSERDA") made two recommended Tier 4 contract awards for the Clean Path NY and Champlain Hudson Power Express Projects that could deliver wind, solar, and hydropower to New York City.[31]

At the same time, the New York State Department of Environmental Conservation ("NYSDEC") has adopted stringent emission standards applicable to combustion turbine peaker plants that are expected to result in many retirements.[32] The NYSDEC has also adopted statewide greenhouse gas emission reduction targets for 2030 and 2050.[33] In October, the NYSDEC refused to grant air permits to two proposed large natural gas-fired generators because they would produce emissions inconsistent with CLCPA objectives.[34]

Looking to the future, the CLCPA established a Climate Action Council "charged with developing a scoping plan of recommendations to meet these targets and place New York on a path toward carbon neutrality."[35] The Climate Action Council has twenty-two members representing various New York State agencies and stakeholders and various advisory panels. It will work in tandem with a Climate Justice Working Group. On December 20, the Climate Action Council released for public comment a draft scoping plan which must be finalized by

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[30] *See <https://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/1D4A997027D37A6685258602006397B6/$File/gov%20announces%20psc%20approval%20expanded%20clean%20energy%20standard%20decarbonize%20ny%20power%20sector-combat%20climate%20chnge_101520%20.pdf?OpenElement>*.

[31] *See <https://www.nyserda.ny.gov/About/Newsroom/2021-Announcements/2021-09-20-Governor-Hochul-Announces-Major-Green-Energy-Infrastructure-Projects-to-Power-New-York-City-With-Wind>*.

[32] *See < https://www.nyserda.ny.gov/About/Newsroom/2019-Announcements/2019-02-28-Governor-Cuomo-Announces-Proposed-Regulations-to-Improve-Air-Quality-and-Reduce-Harmful-Ozone>* (the "Peaker Rule").

[33] *See <https://www.dec.ny.gov/regulations/121052.html>*. The NYISO has previously pointed to the "Peaker Rule" as an example of these emerging New York State policies that are likely to drive the retirement of conventional resources. *See Proposed Enhancements to the "Part A Exemption Test" Under the "Buyer-Side" Capacity Market Power Mitigation* Measures, New York Independent System Operator, Inc., Docket No. ER20-1718 (April 30, 2020) at n. 24.

[34] *See, e.g.*, *</www.utilitydive.com/news/new-york-rejects-proposed-nrg-danskammer-energy-gas-plants-citing-2019-cl/609040*>. The NYSDEC stated in both rejection letters that "[b]y any metric this is a substantial amount of potential direct GHG emissions from a new source in the State. An *increase* of this amount due to this one new fossil fuel-fired power plant project is inconsistent with the achievement of the Statewide GHG emission limit for 2030, or at a minimum would interfere with the attainment of such Statewide GHG emission limit, especially given that achieving such limit requires a substantial overall *reduction* in GHG emissions." *See, e.g.*, *Notice of Denial of Title V Air* Permit, DEC ID: 3-3346-00011/00017, Danskammer Energy Center – Town of Newburgh, Orange County at 7 (emphasis in original), available at *<https://www.dec.ny.gov/docs/administration_pdf/danskammer10272021.pdf>*.

[35] *See, e.g.*, *<https://climate.ny.gov/> and < https://climate.ny.gov/Climate-Action-Council.>*.

January 1, 2023.[36] The final plan's recommendations will be incorporated into the State Energy Plan, which must be followed by state agencies. Additional CLCPA implementation details will ultimately emerge in 2024 when the NYSDEC releases regulations based on the scoping plan. The Climate Action Council must subsequently update the scoping plan at least once every four years.

The NYISO is an independent entity, not an instrumentality of New York State, and is not directly subject to the CLCPA. Nevertheless, the NYISO's transmission, market administration, and reliability-related responsibilities mean that the NYISO must account for the impacts of the CLCPA. Intermittent renewables and energy storage resources are already expressly favored by New York State policy. Similarly, other types of zero-emitting resources that exist now, or that may exist in the future, may be supported by future New York State programs under the auspices of the CLCPA.

It is already apparent, however, that the CLCPA and regulations adopted under it will drive resource investment and retirement decisions and, ultimately, the composition of the overall resource mix in New York. The CLCPA, and expectations regarding its implementation, are already substantially impacting new capacity market entry. For example, all resources in the ongoing Class Year 2021 interconnection study that are currently subject to review under the BSM Rules would be "Excluded Facilities." At the same time, New York State policies, such as the Peaker Rule, have already caused a significant amount of capacity to plan to retire during the Class Year 2019 study window. By 2025, such New York State policies are expected to cause the exit of several GWs of capacity from the NYISO-administered markets

The NYISO's market rules must evolve to reflect the dominant role that CLCPA initiatives will increasingly play in shaping the resource mix in New York State. In the immediate term, substantial new entry by resources that will serve the goals of the CLCPA is expected as part of the NYISO's Class Year 2021 interconnection study process. Applying the currently effective version of the BSM Rules to Class Year 2021 projects could result in over-mitigation of resources that will not have the incentive or ability to suppress prices. The NYISO's best current estimate is that the next round of mitigation determinations under the BSM Rules will be made in July or August of 2022.

4. The Commission's Evolving Approach to Buyer-Side Capacity Market Power Mitigation

The Commission's approach to buyer-side market power mitigation has evolved over time and may be about to change significantly. There is currently a disagreement among the Commissioners regarding the proper scope of buyer-side market power mitigation. Chairman Glick and Commissioner Clements have asserted that buyer-side mitigation should be scaled back in order to avoid conflicts with state energy policies and potential impediments to the entry

[36] *See <https://climate.ny.gov/-/media/Project/Climate/Files/2021-12-17-Draft-Scoping-Plan-for-Council-Consideration.ashx>.*

of clean energy resources.[37] They have argued that the existing BSM Rules define "buyer-side market power" too broadly. By contrast, Commissioner Danly has argued that buyer-side market power measures must continue to guard against artificial price suppression.[38] The current divide is exemplified by the various statements for the record that the Commissioners submitted in Docket No. ER21-2582 concerning PJM's proposal to substantially modify its Minimum Offer Price Rule ("MOPR"), which is PJM's version of the BSM Rules.[39] The Commission deadlocked 2-2 on PJM's MOPR proposal.[40] Thus, PJM's new approach to buyer-side market power mitigation has not yet been addressed by a Commission order. Challenges to PJM's MOPR revisions are currently pending on appeal before the United States Court of Appeals for the Third Circuit[41] (the "PJM MOPR Appeals").

The NYISO Proposal seeks to avoid this conflict and reconcile the Commissioners' evolving views. As stated above, the NYISO Proposal will allow Excluded Facilities to be developed without facing review under the BSM Rules while also ensuring that effective protection against artificial price suppression remains in place.

B. Capacity Accreditation, the Need for Improvements, and the MMU's Recommendations that the NYISO Adopt a Marginal Accreditation Design

In the past, the NYISO has principally relied on evaluations of resources' forced outage rates during the prior two like Capability Periods to determine the UCAP value of the capacity resources. Some ICAP Suppliers, however, have had their performance and availability measured by actual historic performance for a specific set of hours that aligned with typical periods where peak loads are observed as prescribed by the Services Tariff and the ISO Procedures. Special Case Resources, Limited Control Run of River Hydro, Wind, and Solar generators are all examples of unique hourly periods where their performance is used to determine the derating factor used in the ICAP to UCAP calculation. Unforced Capacity is the quantity of capacity that an Installed Capacity Supplier is compensated for when it sells the Installed Capacity of a qualified Resource in the NYISO's ICAP Market. A Resource's UCAP is "the applicable Adjusted Installed Capacity multiplied by the quantity of 1 minus the Resource's

[37] *See, e.g.*, Statement of Chairman Glick and Commissioner Clements, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000 (Oct. 19, 2021) at PP 18-20 ("Glick/Clements Statement").

[38] *See, e.g.*, Statement of James P. Danly, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000 (Oct. 27, 2021) at PP 5-6.

[39] *See* Revisions to Application of Minimum Offer Price Rule, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000 (Jul. 30, 2021) ("PJM MOPR Revision Filing").

[40] *See* Notice of Filing Taking Effect by Operation of Law, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000 (Sept. 29, 2021).

[41] *See* United States Court of Appeals for the Third Circuit, Order (Dec. 21, 2021) (granting motion to hold in temporary abeyance petitions challenging the PJM MOPR revisions that became effective in Docket No. ER21-2582-000 in *PJM Power Providers Group v. FERC*, Case No. 21-3068, *Electric Power Supply Association v. FERC*, Case No. 21-3205, and *Pennsylvania Public Utility Commission v. FERC*, Case No. 21-3243).

derating factor."[42] The amount of UCAP that is sold or certified in the ISO's monthly ICAP Spot Market Auction determines the ICAP obligation of that ICAP Supplier for that month.

The NYISO recently made some improvements to its methodology for calculating UCAP values through the "Tailored Availability Metric" ("TAM") enhancements. These revisions modified the derating factor used to calculate a Resource's UCAP. The TAM relies on ICAP Suppliers' actual historic performance and availability throughout, for most resource types, the prior two like Capability Periods.[43] The TAM enhancements also modified the UCAP calculations for ICAP Suppliers to emphasize performance and availability during the periods of time within the Capability Period when peak demand is expected. The NYISO implemented the TAM rules in early 2021 to more clearly base capacity valuations on a supplier's actual contribution to maintaining the reliability of the system at times when it is most needed.[44] The TAM was intended to be the first major step in an ongoing process of improving capacity valuations.

The NYISO has also implemented rules to allow for the broader participation of energy duration limited ICAP Suppliers, such as storage and demand response in the capacity market.[45] In the past, ICAP Suppliers were required to be able to operate without any duration constraint. An exception was made for Energy Limited Resources and Special Case Resources which had to be able to operate for a minimum of four consecutive hours and were assigned the same capacity value as all other ICAP Suppliers. Under the NYISO's currently effective approach, ICAP Suppliers must be able to meet a 24-hour duration requirement. ICAP Suppliers that cannot meet the full requirement may qualify as ICAP Suppliers with duration limitations of two, four, six or

[42] *See* Services Tariff Section 5.12.6.2.

[43] The NYISO uses historic performance during past "like" capability periods to calculate the derating factor for Availability-Based Resources (*i.e.*, non-intermittent resources). For Intermittent Power Resources, including wind, solar, and landfill gas resources, the NYISO calculates a derating factor based on a resource's availability during specified Peak Load Windows. *See Proposed Tailored Availability Metric*, New York Independent System Operator, Inc., Docket No. ER20-2337-000 (July 7, 2020) at 4-5; *Proposed Clarification to Tailored Availability Metric Tariff Provisions*, New York Independent System Operator, Inc., Docket No. ER21-890-000 (Jan. 15, 2021).

[44] *See N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-2337-000 (Sept. 3, 2020) (letter order accepting revisions) and *N.Y. Indep. Sys. Operator*, Docket No. ER21-890-000 (Mar. 8, 2021) (letter order accepting revisions).

[45] *See*. *N.Y. Indep. Sys. Operator*, *Inc.*, 170 FERC ¶ 61,033 (2020) (accepting, among other things, an improved approach for determining the capacity value of storage resources) (May 2020 Order). The May 2020 Order also impacted Energy Limited Resources and will impact Distributed Energy Resources. It should be noted that the Commission recently referred to the capacity valuation improvements accepted in the May 2020 Order as "an average ELCC approach for storage resources." *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 at n. 79 (2021). The terminology for describing capacity accreditation methodologies is complex and has not been standardized across regions. But to be clear, the NYISO does not view the valuation method accepted by the May 2020 Order as an "averaging" approach.

eight hours with commensurately lower capacity valuations established by the NYISO's duration adjustment factors.[46]

The TAM and the NYISO's other current capacity valuation rules were developed in response to state policy objectives that were in place before the CLCPA was enacted. With the CLCPA's ambitious mandates now in place, it has become clear that the evolution of the supply mix will occur more rapidly than was assumed when the NYISO developed its currently effective crediting measures. As a result of the CLCPA and the NYISO's proposed BSM Rule changes, the NYISO needs to have in place a further-improved method for valuing capacity resources' contribution to system reliability in the near future.

The Services Tariff currently requires the NYISO to evaluate Duration Adjustment Factors every four years.[47] The NYISO proposed this quadrennial review, in part, because it recognized that the reliability value, from a resource adequacy perspective, of duration-limited megawatts is expected to decrease with the increased penetration of duration-limited resource megawatts on the system and that the capacity value of such duration-limited resources would change through time as the bulk electric system changes.[48] When CLCPA initiatives are fully underway it will be necessary to re-assess capacity values more frequently than every four years to keep up with the clean energy transition in New York. The MMU has argued before the Commission that all Independent System Operators and Regional Transmission Organizations ("ISOs/RTOs") "need to substantially improve how they accredit resources to sell capacity" in light of the clean energy transition. The MMU has described this improvement as the single most important market design change needed to move beyond buyer-side capacity market power mitigation rules as the means of ensuring that legitimate state resource policy choices do not disrupt Commission-jurisdictional markets.[49] "If the objective of the [capacity] market is to provide reliability, then the quantification of the amount of capacity that resources can sell has to reflect the marginal reliability value of those resources. . . ."[50]

The MMU has emphasized that a "marginal" capacity accreditation methodology would ensure that the reliability contributions of intermittent resources are not overvalued as their

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[46] *See Proposed Tariff Revisions Regarding Establishment of Participation Model for Aggregations of Resources, Including Distributed Energy Resources, and Proposed Effective Dates*, New York Independent System Operator, Inc. at 63-65 (June 27, 2019). These revisions were accepted as just and reasonable in *N.Y. Indep. Sys. Operator*, 170 FERC ¶ 61,033 (2020).

[47] *N.Y. Indep. Sys. Operator*, 170 FERC ¶ 61,033 at P 119 (2020) ("We find that NYISO's proposal to reevaluate its Duration Adjustment Factors quadrennially is just and reasonable because it will allow NYISO to ensure that the capacity values for duration-limited resources will be updated to reflect accurately the contributions to resource adequacy of each resource as the NYISO system changes in the future. NYISO's proposal will also align the re-study period for Duration Adjustment Factors with the demand curve reset process timeline.").

[48] *Id*. at P 88 (summarizing NYISO proposal).

[49] March 23, 2021 Transcript at 143, *Technical Conference Regarding Resource Adequacy in the Evolving Electric Sector*, Docket No: AD21-10-000.

[50] *Id.* at 144.

penetration increases. At the same time, a marginal approach would encourage both the development of complementary flexible resources and the exit of inflexible conventional resources. "[I]f we properly accredit our old inflexible resources, some of them will retire and make room for the state sponsored resources and avoid the artificial surpluses that are so harmful."[51]

For example, in written March 2021 comments in Docket No AD21-10-000, the MMU explained that "[t]he marginal value of intermittent renewable resources falls as the penetration of renewable resources increase. At high penetration rates, the marginal value of additional resources is close to zero. Hence, controllable and flexible resources will continue to be necessary to satisfy the RTOs' planning reliability requirements for the foreseeable future."[52] More specifically:

> As more non-conventional resources enter the market, it will be increasingly important to refine the capacity compensation rules so that each resource is paid according to its marginal reliability value. This will ensure that if a region is saturated with a particular intermittent technology, transparent capacity market signals will encourage development of other complementary technologies. Inflexible conventional resources with long startup times will provide lower contributions to reliability as the penetration of intermittent resources increases. Alternatively, fast-ramping and fast-starting resources will be increasingly valuable from a reliability perspective. Improving the accreditation of resources to reflect these changes will assist greatly in efficiently transitioning the generating fleet and achieving states policy goals. For example, as the markets facilitate the retirement of low-value conventional resources, the market incentives to develop and maintain both clean and flexible resources will increase.[53]

Similarly, at FERC's May 25, 2021 technical conference in the same proceeding, the MMU emphasized that, "for all technology types we have to accredit them based on their marginal value, their marginal contribution to reliability even though for a lot of resources that we're talking about here their value goes down as the penetration increases, but the market can't perform efficiently unless we recognize what the next megawatt is going to give you in terms of reliability."[54]

As discussed below in Section V.B.2, the MMU also recommended that the NYISO adopt a marginal capacity accreditation design in its most recent *State of the Market Report*.[55]

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[51] May 25, 2021 Transcript at 144, *Technical Conference: Modernizing Electricity Market Design*, Docket No: AD21-10-000 ("May 25 Tr.").

[52] *See Comments of Potomac Economics, Ltd*, Docket No. AD21-10-000 (Mar. 22, 2021) at 9-10.

[53] *Id.* at 7.

[54] May 25 Tr. at 170:1-9.

[55] Potomac Economics, *2020 State of the Market Report for the New York ISO Markets* (May 2021) ("2020 SOM Report").

V. OVERVIEW AND LEGAL JUSTIFICATION FOR THE NYISO PROPOSAL

As noted above, the NYISO Proposal includes three major enhancements: (i) BSM reforms pertaining to "Excluded Facilities;" (ii) improved capacity accreditation through the adoption of a "marginal" methodology; and (iii) a change to the way that UCAP Demand Curve reference levels are calculated. As noted by the Mukerji Affidavit, all three enhancements are important, just, reasonable, and not unduly discriminatory improvements in their own right. The second and third enhancements also serve to validate and facilitate the first.

The Commission plays a "passive and reactive" role when it considers tariff revisions proposed under FPA Section 205.[56] The Commission has explained that "[u]nder FPA section 205, the Commission is limited to considering the filing before it,. . . ."[57] Federal courts have similarly noted that "[w]hen acting on a public utility's rate filing under section 205, the Commission undertakes 'an essentially passive and reactive role' and restricts itself to evaluating the confined proposal."[58] Courts have further acknowledged that "FERC has interpreted its authority to review rates under [the FPA] as limited to an inquiry into whether the rates proposed by a utility are reasonable—and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."[59] The Commission "is not required to choose the best solution, only a reasonable one."[60] It is well established that different versions of market rules may simultaneously be just, reasonable, and not unduly discriminatory.[61] As Chairman Glick and Commissioner Clements recently emphasized, the Commission's "statutory role when considering a filing under section 205 of the FPA does not permit the perfect to be the enemy of the good" and potential imperfections do not preclude FERC from finding a Section 205 filing to be just, reasonable, and not unduly discriminatory.[62]

The NYISO's tariff revisions included in this filing are enhancements to the currently effective versions of the NYISO's BSM Rules, capacity valuation procedures, and ICAP Market Demand Curve calculations. Consistent with the legal standards referenced above, the fact that the NYISO's improvements are just, reasonable, and not unduly discriminatory does not mean that its existing tariff rules are defective. To avoid any doubt, the NYISO does not concede that

[56] *See, e.g.*, *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) ("[S]ection 205 is intended for the benefit of the utility . . . and FERC plays an essentially passive and reactive role under section 205" (internal quotations and citations omitted)).

[57] *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at P 48 (2018).

[58] *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017) (*quoting City of Winnfield v. FERC*, 744 F.2d 871, 875-76 (D.C. Cir. 1984)).

[59] *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

[60] *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007).

[61] *See, e.g.*, *Me. Pub. Utils. Comm'n v. FERC*, 520 F.3d 464, 470-71 (D.C. Cir. 2008), *rev'd in part on other grounds sub nom*. *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165 (2010) ("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.").

[62] Glick/Clements Statement at P 4.

any of its existing tariff measures are unjust, unreasonable, or unduly discriminatory. There is no basis under FPA Section 206 to modify existing NYISO tariff provisions that would be enhanced by this filing. There is likewise no need for the Commission to establish hearing, settlement, technical conference, or deficiency procedures. The NYISO's proposal is the result of extensive stakeholder input within the NYISO's shared governance process and reflects broad supermajority support from stakeholders.

The following sections describe each of the NYISO's proposed market enhancements and then explain why each is just, reasonable, and not unduly discriminatory.

A. The NYISO's Revisions to the BSM Rules

1. Overview

The NYISO proposes to revise the BSM Rules to better accommodate New York State's CLCPA policies while ensuring that the NYISO continues to avoid both over- and under-mitigation of buyer-side market power.

Resources that are required to satisfy goals specified in the CLCPA would be treated as "Excluded Facilities." Such Resources would not be subject to evaluation under the BSM Rules or otherwise subject to an Offer Floor. Excluded Facilities would automatically include, but not be limited to, wind, solar, storage, hydroelectric technologies (including tidal, ocean, and wave generation), geothermal, fuel cells that do not use fossil fuel, and demand response (whether participating in the capacity as a Special Case Resource ("SCR") or a Distributed Energy Resource ("DER")). Resources in these categories would automatically be excluded from the BSM rules and will not be considered an Examined Facility as BSM reviews are performed for a Class Year, Additional Deliverability Study, or Expedited Deliverability Study.

The NYISO would also treat additional resource types as Excluded Facilities, beyond those previously specified, if any of the following applies:

- The technology type is specifically identified by the CLCPA or as publicly identified by New York State as supporting the goals of the CLCPA;
- The resource has a contract with NYSERDA (for example, under an applicable Tier) supporting the goals of the CLCPA; or
- The resource is eligible to receive a contract authorized by New York State or its agents, such as NYSERDA, that supports the goals of the CLCPA.

A Resource not explicitly identified in the NYISO's Excluded Facility definition, or a UDR project, can still become an Excluded Facility if it satisfies the applicable elements stated above regarding supporting the goals of the CLCPA and provides the required self-certification. Self-certifications must be presented at the start of the Class Year or Expedited

Deliverability Study.[63] As discussed below, the self-certification procedures would be comparable to self-certification rules that the Commission has found were appropriate under the NYISO's Competitive Entry Exemption and Self-Supply Exemption.

The Renewable Exemption, in its current form, would become duplicative and would, therefore, be eliminated. Existing resources with a renewable exemption are purely intermittent wind and solar facilities and, as such, will become Excluded Facilities if the NYISO's tariff revisions are accepted. New wind, solar, run of river hydro and other renewable technologies will also be designated as "Excluded Facilities." This is entirely consistent with the underlying intent of the Commission's Renewable Exemption orders that intermittent renewables that lack the incentive and ability to suppress prices should not be subject to mitigation, except to the extent that the collective entry of large numbers of such resources could collectively suppress capacity prices. Moreover, the analyses included in this filing show that the entry of large numbers of state-subsidized renewables would not result in significant capacity market price suppression given current and anticipated market conditions in New York. Core to this analysis is the implementation of the capacity accreditation revisions proposed in this filing, which did not exist at the time that the Renewable Exemption was first established.

Other existing exemptions under the BSM Rules, such as Competitive Entry Exemption ("CEE") and the Self-Supply Exemption ("SSE"), would remain available to qualifying Examined Facilities. The currently effective Part A and Part B exemption tests would still be performed for resources subject to the BSM Rules consistent with how they are currently applied.[64] The Excluded Facilities will be identified and posted along with request for CEE and SSE.

2. The Revisions to the BSM Rules Will Avoid Over-Mitigation While Continuing to Guard Against Buyer-Side Market Power and to Provide for Just and Reasonable Capacity Market Prices

The NYISO retained Analysis Group to model the future operation of the NYISO capacity market under conditions expected to exist after the NYISO's implementation of the tariff revisions in this filing. The AGI Study sought to determine whether the NYISO capacity market will continue to support the achievement of resource adequacy in the state of New York through competitive capacity market auctions administered in concert with the influx of state-

[63] *See* proposed revisions to Services Tariff § 23.4.5.7.5.

[64] The NYISO continues to support the proposed revisions to its existing Part A Test that were rejected by *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,206 (2020) and that continue to be held in abeyance on appeal. *See N.Y. Indep. Sys. Operator, Inc. v. FERC*, D.C. Cir. Case Nos. 20-1526 *et al.*, Clerk's Order (Dec. 2, 2021) (extending abeyance period until June 14, 2022). While some of those proposed changes are no longer pertinent in light of this filing, several of them 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 this filing. The NYISO hopes that the Commission will address rehearing requests in that proceeding in a future order, as it stated that it would in its November 5, 2020 notice. *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, 2020).

supported clean energy resources driven by the CLCPA. The analysis was designed to answer two questions: "(1) With the proposed BSM Reforms in place, will the NYISO capacity market continue to produce competitive market outcomes?; and (2) With the proposed BSM Reforms in place, will the NYISO capacity market continue to provide financial incentives for the retention and addition of resources needed to maintain power system reliability?"[65] The Hibbard/Wu Affidavit explains that the AGI Study focused on projected capacity market outcomes over the near to medium term. Specifically, the AGI Study concentrated primarily on market results in "year one" (2022) and "year five" (2026) following implementation of the NYISO Proposal.[66] For these years, Analysis Group constructed forecasted supply and demand curves starting from current conditions, with adjustments to both based on expected changes in demand, reference technology costs, existing resource going-forward costs, resource entry and exit over these time periods, and the likely magnitude of additional non-mitigated CLCPA resources.[67]

The AGI Study simulated the clearing of the NYISO capacity market in those future years using a model of the NYISO ICAP Spot Market Auction to approximate outcomes of the Installed Capacity market as a whole. The model separately represented the two sides of the capacity market—the supply curve and demand curve in each year, season, and capacity locality—and then applied NYISO's capacity market clearing logic to determine final clearing prices and quantities.[68] Modeled supply curves were based on resource quantities from NYISO's June 2020 Grid in Transition analysis ("GIT Evolution Study"), which analyzed the resource pathway required to meet the CLCPA's GHG emission reduction requirements over the period 2020-2040.[69] The supply curves were developed using representative technology categories (*e.g.*, combined cycle, steam turbine, gas turbine, wind, solar, etc.) for existing and new resources in each year, with the total installed capacity of each grouped technology category equal to the expected total quantity of resources in that class, by locality and year.[70]

The supply curves in the AGI Study were calculated by first estimating the ICAP values for each resource type in each Locality, and then by converting those ICAP values to UCAP values. The summer ICAP quantities for each technology type in each year and Locality were taken from the GIT Evolution Study, which modeled economic entry and exit of generators over time from 2020 to 2040, with significant entry of renewable generation and battery storage by 2032, and some exit of fossil fuel and nuclear generation. Winter ICAP values for non-renewable resources were calculated by multiplying each summer ICAP value by a scaling factor

[65] Attachment III at P 9.

[66] *Id*. at P 12.

[67] *Id*.

[68] *Id*. at P 15.

[69] *Id*. at P 16; *see also* Brattle Group, "New York's Evolution to a Zero Emission Power System: Modeling Operations and Investment Through 2040 Including Alternative Scenarios," June 22, 2020 ("GIT Evolution Study") available at <*https://www.brattle.com/insights-events/publications/new-yorks-evolution-to-a-zero-emission-power-system-modeling-operations-and-investment-through-2040-including-alternative-scenarios/*>.

[70] Attachment III at P 16.

derived from the NYISO 2021 Gold Book. Winter ICAP values for renewable resources were assumed to be identical to summer ICAP values. The conversion of ICAP values to UCAP values was performed differently for the different years of the study. For 2022, the conversion was performed using the forced outage derating method prescribed under the existing Services Tariff provisions. For 2026 and 2032, the study assumed that, for renewable resources, the capacity accreditation will be based on the marginal capacity values estimated in the GIT Evolution Study. In particular, these values were meant to approximate the marginal UCAP value of wind, solar, and storage resources over time as more such resources enter the market. The AGI Study assumed that, in a given year, all renewable or storage resources of a given type would be assigned the same marginal capacity value based on system-wide penetration of that resource type, regardless of vintage or location. The Hibbard/Wu Affidavit clarifies that the resulting capacity values for each renewable resource type identified in the GIT Evolution Study—and the resulting supply curves for each—are consistent with the values that they would anticipate under the NYISO's capacity accreditation design.

In addition, the AGI Study included a series of sensitivities that incorporated potential changes to the NYISO capacity market supply and demand curves in a later year (2032), including proposed transmission changes, increases in demand curve risk premiums, and a potential alternative demand curve peaking technology.

The Hibbard/Wu Affidavit explains that the AGI Study analysis was based on reasonable modeling assumptions designed to accurately reflect likely future scenarios on a rapidly changing system. Analysis Group considered many factors that affected the modeling set up and results in each study year, season, and locality. "Exogenous factors," including New York State regulatory actions, led to resource addition and attrition over the study period. In addition, market dynamics led to some retirement of resources based on market economics. The modeling period included an unprecedented potential for changes in electricity demand, going-forward costs of existing units, cost of the demand curve reference technology, ICAP/UCAP translation factor, CLCPA resource growth, and transmission topology. The changes to the NYISO system reflected in these assumptions include the following changes by 2026: a decrease in fossil fueled resources of 2,834 MW, an increase in onshore wind resources of 244 MW, an increase in offshore wind of 1,200 MW, an increase in grid-connected solar photovoltaic resources of 5,000 MW, and an increase in battery storage resources of 1,571 MW.

Based on these assumptions, forecasts, and sensitivities, Analysis Group ran the Installed Capacity markets for 2026 and 2032 using the NYISO's market clearing logic. Table 1 and Table 2 below are taken from the Hibbard/Wu Affidavit.[71] They present clearing price results from the AGI Study for the New York Control Area ("NYCA") as a whole, and for each of the NYISO capacity market localities. The results provide an indication of expected capacity market prices in dollars per kilowatt-month ($/kW-mo) and clearing quantities in unforced capacity megawatts ("UCAP MW") by year, season, and locality. The results in year one (2022) are provided for the baseline model set up, and the results for year five use baseline model assumptions for model year 2026.

[71] *See* Attachment III, Tables 1 and 2.

Table 1: Capacity Market Clearing Prices ($/kW-mo) by Capacity Locality and Season, 2022-2026

Capacity Locality	Summer		Winter	
	2022	2026	2022	2026
NYCA	$4.60	$5.07	$3.33	$4.23
G-J Locality	$7.46	$9.02	$3.87	$5.81
NYC (J)	$7.46	$12.83	$3.87	$7.51
LI (K)	$7.13	$14.61	$3.66	$12.05

Table 2: UCAP Clearing Quantities (MW) by Capacity Locality and Season, 2022-2026

Capacity Locality	Summer		Winter	
	2022	2026	2022	2026
NYCA	36,543	34,996	37,540	35,200
G-J Locality	13,791	12,376	14,268	12,868
NYC (J)	9,459	8,638	9,667	9,107
LI (K)	5,817	5,076	5,985	5,286

These AGI Study results were based upon the resource penetration levels described in Table 3 below.[72] The results provide an indication of expected capacity market prices in dollars per kilowatt-month and clearing quantities in UCAP megawatts by year, season, and locality. The results in year one (2022) are provided for the baseline model setup, and the results for year five use baseline model assumptions for model year 2026.

Table 3: NYCA Summer Capacity by Unit Type (MW)

Unit Type	2022		2026		2032	
	ICAP	UCAP	ICAP	UCAP	ICAP	UCAP
Fossil Fuel	26,315	24,322	23,481	21,833	23,485	21,836
Hydro	5,018	4,210	5,018	4,210	5,018	4,210
Nuclear	3,345	3,266	3,345	3,266	2,156	2,105
Onshore Wind	1,739	278	1,983	210	9,698	633
Offshore Wind	0	0	1,200	349	7,591	362
Utility-Scale Solar	56	26	5,056	942	16,669	702
Storage (2-hour)	592	258	2,156	816	4,264	1,266
Storage (4-hour)	2	2	9	7	386	229
Other Resources	2,671	2,541	2,571	2,450	3,251	3,109
SCRs	1,185	1,067	1,185	1,185	1,185	1,185
Net Imports	973	973	973	973	973	973
UDRs	1,042	1,042	1,042	1,042	1,042	1,042
Total	**42,939**	**37,985**	**48,021**	**37,283**	**75,719**	**37,653**

[72] *See* Attachment III, Table 3.

The Hibbard/Wu Affidavit explains that the AGI Study modeled the capacity market in 2026 and 2032 under three sets of sensitivities that represented potential changes to capacity market reference technologies and financial parameters, and expected changes to the transmission system.[73] This included modeling the system with the addition of two large transmission projects that have received recommended Tier 4 contract awards from NYSERDA and that could change the geographic mix of resources needed to meet New York's overall resource adequacy requirements. As noted above, these projects are the 1,250 MW Champlain Hudson Power Express transmission line from Quebec into New York City, with a planned in-service date of 2025 and the 1,300 MW Clean Path New York line from Zone E into New York City, with an in-service date as early as 2027.[74]

The AGI Study concluded that its forecasted clearing price results indicated that the NYISO-administered capacity auctions would produce results consistent with competitive market outcomes.[75]

Moreover, the AGI Study showed that NYISO capacity auction outcomes would continue to meet resource adequacy requirements after the NYISO Proposal is effectuated. The analysis shows the capacity market can continue to generate competitive market outcomes, and provide sufficient financial incentives for the economic retention of resources needed for reliability and for the economic entry and exit of resources. This result is sustained in all seasons, zones and scenarios over the first five years (*i.e.*, for both model years 2022 and 2026).[76]

Finally, the scenarios studied with a longer-term view (2032) and involving other factors—such as the addition of two large controllable transmission lines bringing capacity into the New York City region, changes in the reference technology, and possible changes in the financial parameters for new technology development—yielded similar results. Specifically, the scenarios for 2032 also demonstrated continued competitive market outcomes and the retention through the capacity market construct of sufficient resources to meet resource adequacy requirements.[77]

The AGI Study is not the only recent evaluation to note the potentially offsetting impacts of CLCPA policies that encourage the entry of state-favored resources and CLCPA policies that encourage the exit of existing resources. In late 2020 in Docket No. EL21-7-000, the MMU explained that considering the capacity market price impacts of state-supported entry in isolation from the impacts of state polices that encouraged retirements "significantly overestimate the

[73] *See* Attachment III at P 28.

[74] *Id*.

[75] *Id*. at P 35.

[76] *Id*. at P 36.

[77] *Id.* at P 37.

price impacts of state policies."[78] Accurately evaluating the impacts of the NYISO's changes to the BSM Rules on capacity market price outcomes requires that all state actions be considered.

Similarly, when it accepted the currently effective version of the NYISO's Renewable Exemption, the Commission recognized that it was appropriate to account for state policy-driven retirements when developing the limits for granting Offer Floor exemptions to intermittent renewable entrants.[79] In accepting the NYISO's proposal to consider policy-driven retirements ("Incremental Regulatory Retirements") for limiting the price impacts of exempting renewable resources, the Commission stated that:

> We also agree with NYISO that the proposed definition of Incremental Regulatory Retirement appropriately recognizes that out-of-market actions that reduce the supply of renewable resources in the capacity market offset the effects of renewable resource policies that increase supply of renewable resources in the capacity markets. Therefore, we find that the Incremental Regulatory Retirements component of NYISO's proposed Renewable Exemption Limit is mindful of the relationship between: (1) the size of the MW cap; and (2) the limit the MW cap imposes on the renewable resources exemption's impact to market prices.[80]

In short, substantial evidence demonstrates that capacity market prices will continue to reflect competitive market outcomes, and therefore be just and reasonable, after the NYISO Proposal is in place. This is true for both the near and medium term and out into the 2032 scenario examined by the AGI Study, as the market penetration of CLCPA resources grows but is more accurately valued under the NYISO's marginal capacity accreditation design.

Importantly, the NYISO and the MMU will continue to monitor and identify any relevant market behaviors or developments that could constitute abuses of buyer-side market power. If the NYISO were to identify any such exercise of buyer-side market power, it would take all appropriate and timely actions to address such abuse and protect against unreasonable capacity market outcomes. Moreover, the NYISO is proposing to retain the core feature of the existing BSM Rules to protect against potential exercises of buyer-side market power involving resources that are not serving New York State's CLCPA objectives.

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[78] *See Motion to Intervene and Comments of the New York ISO's Market Monitoring Unit*, Docket No. EL21-7-000 (Nov. 18, 2020) at 12.

[79] *See id; see also N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶61,058 at P 50 (2020).

[80] *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,058 at P 50; s*ee also Assessment of the Buyer-Side Mitigation Exemption Tests for the Class Year 2019 Additional SDU Study Projects*, Potomac Economics, June 2021, at 15, available at <*https://www.potomaceconomics.com/wp-content/uploads/2021/06/MMU-Report-on-CY19-NYC-Additional-SDU-Study-BSM-Tests.pdf*> (Stating that Incremental Regulatory Retirements are included in the calculation of the Renewable Exemption limit because "[s]tate actions that cause resources to exit the market would reduce the capacity margin, thus enabling additional entry of renewable resources without suppressing prices.").

3. The NYISO Is Not Required to Adopt Mitigation Rules that Would Prevent *All* Price Suppression

The NYISO is not claiming that its proposed revisions to the BSM Rules will prevent any and all possible future price suppression. Instead, the Hibbard/Wu Affidavit confirms that the implementation of the tariff revisions included in this filing will prevent significant price suppressive effects that could impact the justness and reasonableness of capacity market prices. That is all that the FPA requires and is wholly consistent with applicable Commission and judicial precedent.

As described above, under the just and reasonable standard, the Commission has consistently held that price suppression is not *per se* unlawful. Instead, in the context of evaluating buyer-side mitigation measures, the Commission's "balancing of the investor and the consumer interests"[81] under the FPA requires that the Commission evaluate the price suppressive effects of a given rule against any countervailing considerations, including avoiding the risk of over-mitigation.

Under this balancing test, the Commission held that the renewable exemption implemented by ISO-NE was not unjust and unreasonable, even though the exemption could result in relatively minor levels of price suppression in ISO-NE's Forward Capacity Market ("FCM"). In ISO-NE, the "Commission recognized that the renewable exemption has the potential to cause price suppression,. . . ."[82] At the same time, "the Commission determined that the renewables exemption 'is consistent with the purpose of the' Forward Capacity Market, 'namely, ensuring that price signals are sufficient to incent existing resources to stay in the capacity market, and new resources to enter, so that ISO [New England] meets its reliability requirements at least cost.'"[83] The Commission emphasized that there must be "a balance between, on one hand, setting a price that will retain enough existing resources to maintain reliability and, on the other hand, protecting consumers from overpaying for that capacity and minimizing price volatility that could undermine both investor and consumer confidence in the market."[84]

Accordingly, ISO-NE's renewable exemption proposal had "struck an appropriate balance of competing interests on this issue and presented evidence that the impact on price from the limited renewables exemption would not be significant."[85] The Commission concluded that ISO-NE's renewable exemption proposal might result in some degree of price suppression but that: "[i]n accepting the renewables exemption, the Commission recognized the potential of such

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[81] *Wisconsin Pub. Power Inc. v. FERC*, 493 F.3d 239, 262 (D.C. Cir. 2007) (per curiam).

[82] *NextEra Energy Resources, LLC v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018).

[83] *Id. quoting ISO New England, Inc.*, 155 FERC ¶ 61,023 at P 35 (2016).

[84] *ISO New England Inc.*, 155 FERC ¶ 61,023 at P 34 (2016) *quoting New England Power Generators Association, Inc. v. ISO New England Inc*., 146 FERC ¶ 61,039, at P 52 (2014) (citations omitted).

[85] *Id.* at P 36.

an exemption to suppress capacity prices and based its acceptance in part on factors that would limit the price impact."[86]

The Commission decision was ultimately upheld by the United States Court of Appeals for the District of Columbia Circuit. The Court observed that "[i]n those cases in which the Commission has considered exemptions to the minimum offer price rule, it considered exemptions using a fact-specific balancing test, factoring in the scope of the exemption, the existence of sloped demand curves, and the overall impact on the market, and only accepted exemptions that were appropriate based on the specific features of the market."[87] The Court went on to approve the Commission's application of that balancing approach with respect to the ISO-NE renewable exemption even though there was some risk that it would result in price suppression. The Court found that "the Commission reasonably balanced the potential for limited price suppression against competing interests in concluding that the renewable exemption to the minimum offer price rule is consistent with the purpose of the forward capacity market."[88]

The Commission performed a similar balancing analysis in its orders accepting ISO-NE's subsequent Competitive Auctions with Sponsored Policy Resources ("CASPR") proposal. CASPR was the result of an additional effort by ISO-NE to better accommodate New England state actions to procure sponsored renewable resources outside of ISO-NE's wholesale markets. Under CASPR, ISO-NE runs an additional "substitution" auction along with its established Forward Capacity Auction ("FCA"). The primary auction maintains the standard FCA process and its corresponding Minimum Offer Price Rule and determines the capacity prices to be paid by ISO-NE loads. The substitution auction facilitates the transfer of capacity supply obligations from existing capacity resources, which commit to permanently exit ISO-NE's wholesale markets, to new state-sponsored renewable and clean resources. In principle, CASPR allows new, subsidized resources to enter the market without being subject to the MOPR in exchange for retiring older resources.

CASPR expressly sought to balance competing goals including the need to maintain competitively-based capacity auction prices by minimizing the price-suppressive effect of out-of-market subsidies on competitive (*i.e.*, unsubsidized) resources in the FCA" and to "accommodate the entry of new Sponsored Policy Resources into the FCM over time…."[89] In response to arguments that CASPR would lead to price suppression, the Commission "acknowledge[d] that, to the extent CASPR enables the entry of Sponsored Policy Resources with low marginal energy costs, it may reduce energy market prices and, over time, alter the composition of resources on the ISO-NE system."[90] The Commission stated that such price suppression "presents the question of whether these potential effects, which are byproducts of ISO-NE's proposal seeking to accommodate the entry of Sponsored Policy Resources, lead to unjust and unreasonable

[86] *ISO New England Inc.*, 158 FERC ¶ 61,138 at P 11 (2017).

[87] *NextEra Energy Resources*, 898 F.3d at 23.

[88] *Id.* at 21.

[89] *ISO New England Inc.*, 162 FERC ¶ 61,205 at P 6 (2016).

[90] *Id.* at P 118.

rates."[91] The Commission held that the risk of such price suppression would not result in unjust and unreasonable rates because it was adequately offset by countervailing factors; the Commission stated:

> There is an inherent and intended feedback between the energy and capacity markets in ISO-NE. If lower energy market prices result in some resources needing to submit higher capacity market prices to express their breakeven point between revenues and going-forward costs, that result is consistent with the complementary design of ISO-NE's markets. We are not persuaded by CPV Towantic's argument that the cited side effects of ISO-NE's proposed compromise between competing objectives is unjust and unreasonable.[92]

In its CASPR rehearing order, the Commission reiterated the need to balance potential price suppression against countervailing factors in evaluating whether the CASPR proposal would produce just and reasonable rates. Referring back to the renewable exemption orders, the Commission noted that it had "determine[d] that retirements would offset the renewable exemption's price suppressive effects" and that "[t]he *NextEra* court affirmed this analysis."[93] The Commission emphasized that, in accepting CASPR, it had engaged in a similar evaluation, and found that "based on CASPR design choices and record evidence, CASPR will allow the FCM to continue to meet its objective of providing resource adequacy at just and reasonable rates."[94] The Commission emphasized further that it "continue[d] to support the reasonableness of this finding."[95]

The Commission engaged in a similar balancing analysis in the orders that resulted in the establishment of the Renewable Exemption to the BSM Rules in the NYISO ICAP Markets. Responding to a complaint filed by the state that sought to eliminate buyer-side mitigation altogether for renewable resources, the Commission found "that intermittent renewable resources with low capacity factors and high development costs, including many wind and solar resources, narrowly defined, provide their developer with limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices."[96] The Commission also stated that "to further limit any risk of artificial price suppression, we find that NYISO should limit the total amount of these renewable resources—in the form of a megawatt cap—that may receive the renewable resources exemption required herein."[97] Thus, the Commission did not seek to eliminate price suppression altogether. Rather, it calculated that any price suppression resulting from a narrowly-tailored Renewable Exemption would have only limited effects and

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[91] *Id.*

[92] *Id.*

[93] *ISO New England Inc.*, 173 FERC ¶ 61,161 at P 121 (2020).

[94] *Id. quoting* 162 FERC ¶ 61,205 at P 25.

[95] 173 FERC ¶ 61,161 at P 121 (2020).

[96] *N.Y. State Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022 at P 47 (2015).

[97] *Id.*

would be offset by the countervailing benefit of reducing the impacts of over-mitigation on renewable resources.

The NYISO Proposal strikes a balance between avoiding both artificial price suppression and over-mitigation that is comparable to the balance accepted by the Commission in the ISO-NE renewable exemption and CASPR proceedings, and in the NYISO Renewable Exemption proceeding. If the NYISO Proposal were to result in limited price suppressive effects, the precedents discussed above give the Commission discretion to conclude that they are outweighed by the benefits of the NYISO Proposal, including accommodating New York State policies and resolving federal-state regulatory tensions.

4. The NYISO Proposal Reasonably Accommodates New York State's CLCPA Mandates

The Commission has frequently acknowledged that Section 201 of the FPA establishes a "cooperative federalism" framework.[98] The FPA expressly gives states jurisdiction over, *inter alia*, "facilities used for the generation of electric energy. . . ." including resource adequacy and resource mix determinations. The Commission has traditionally acknowledged state authority in this area and sought, whenever practicable, to avoid unnecessary interference with state resource decisions.[99] Thus, New York State has legitimate reserved authority over the resource mix in the NYCA, including the resources that will be used to satisfy the NYCA's resource adequacy needs. New York State's CLCPA policy mandates fall under this reserved authority.

As discussed above, multiple Commissioners have expressed concerns about conflicts between FERC-jurisdictional buyer-side mitigation and state policies and have favored adjustments to buyer-side mitigation rules to accommodate better state policy priorities. Chairman Glick and Commissioner Clements have consistently asserted that existing buyer-side mitigation rules define buyer-side market power too broadly, and that buyer-side mitigation should be significantly scaled back to avoid conflicts with state programs designed to address climate change.[100] The case for accommodating New York State's CLCPA mandates and policies is especially strong. The NYISO is a single-state ISO. New York is the only state in the NYISO region and it has fully committed to a rapid transition to a resource mix in which 70% of electricity is produced by renewable resources by 2030 and 100% from zero-carbon resources by

[98] *See, e.g.*, *N.Y. State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc*., 170 FERC 61,110 at P 37 (2020) (stating that the BSM Rules must function to protect Commission-jurisdictional capacity markets while "preserving the framework of cooperative federalism established under the FPA."); *Coalition for Competitive Electricity v. Zibelman*, 906 F.3d 41, 50 (2nd Cir. 2018) (citing FPA Section 201, 16 U.S.C. § 824).

[99] *See, e.g.*, *CXA La Paloma, LLC v. Cal. Indep. Sys. Operator Corp.*, 165 FERC ¶ 61,148 at P 76 (2018), *order on reh'g.*, 169 FERC ¶ 61,045 (2019) (denying complaint regarding California Independent System Operator resource adequacy construct, refusing to impose centralized capacity market, and describing the variation in Commission approach to resource adequacy among the FERC-jurisdictional ISOs/RTOs).

[100] *See, e.g.*, Glick/Clements Statement at PP 7, 46.

2040. Unlike in multi-state regions, there are no other states within the NYISO region that favor a different approach to climate change. As Commissioner Christie has noted, there is also no prospect that the costs of New York State's policy choices will be shifted to customers in other states.[101]

The Commission also recently emphasized the need to respect New York State's authority over generating resources and to ensure the preservation of "the framework of cooperative federalism established under the FPA."[102] Chairman Glick has recognized that the Commission should not second guess improvements to buyer-side market power mitigation rules that enjoy state and consensus stakeholder support and that reflect the practical realities of market administration.[103]

Commission and judicial precedent therefore is clear that the Commission has reasonable discretion to balance the risks of over-mitigation against the risks of under-mitigation in ensuring just and reasonable rates. The Commission should account for the desirability of accommodating New York State's CLCPA goals as part of striking that balance in the NYISO context. It would be arbitrary and capricious for FERC to force the NYISO to ignore market and investment realities driven by CLCPA mandates.

The NYISO Proposal would strike this balance, accommodating New York State policies while continuing to include adequate safeguards against buyer-side market power, including the "broad" form of buyer-side market power that is the focus of the Artificial Price Suppression Precedents. There is no practical need to expand the NYISO's definition of Excluded Facilities beyond the resources that serve CLCPA objectives. The CLCPA will be the main organizing principle driving New York State policy objectives for the foreseeable future. Therefore, it is

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[101] *See, e.g. N.Y. State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 174 FERC ¶ 61,110 (2021), Christie Concurring at P 3 ("Since other retail customers ultimately pay, directly or indirectly, for subsidies directed to the few, whether the state policy actually saves *all* retail consumers in New York money or provides other benefits is a debate for elected policy-makers – and the voters – in the State of New York. I also note that the NYISO is a single-state ISO and I have been able to locate no evidence in the record of the New York policies at issue in today's order are causing cost-shifting onto customers in other states.") *Cf.* Statement of Commissioner Christie, *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000 (Oct. 19, 2021) at n.11 (calling for consumers to be "held harmless" from the costs of policy choices made by other states in a multi-state regional market.).

[102] *N.Y. State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 170 FERC 61,110 at P 37 (2020).

[103] *See N.Y. Indep. Sys. Operator, Inc*., 172 FERC ¶ 61,206 (2020), Glick Dissenting at P 12 ("The proposal received a super-majority of votes in the stakeholder process and not a single party protested this issue before the Commission, including any of the generator groups that have cheered on the Commission's slew of recent buyer-side mitigation orders. But, of course, the Commission thinks it knows better than NYISO's stakeholders, better than NYISO's Market Monitoring Unit, better than the New York State Public Service Commission, and better than the people of New York. In rejecting NYISO's proposal, the Commission makes clear how little it cares about stakeholder compromise or the consequences its actions will have for the practical reality of running an organized wholesale market.").

just, reasonable, and not unduly discriminatory to confine the exclusion to resources that serve CLCPA objectives.

5. The NYISO Proposal Represents a Legally Durable Solution

The Commission, the states, and stakeholders in regions with organized capacity markets have been seeking a "legally durable solution" to the tension between protecting Commission-jurisdictional markets and accommodating state policies for years. The NYISO Proposal is an attempt to reconcile those competing priorities in a way that will reduce litigation risks and regulatory uncertainty.

Buyer-side mitigation policy issues have been extremely contentious in the NYISO region and elsewhere for more than a decade. The PJM MOPR Appeals will presumably not be resolved until well after the NYISO expects to make initial determinations under the BSM Rules in July or August of 2022, and could go on for years. The NYISO is attempting to avoid a similar lengthy legal controversy. The NYISO Proposal is supported by New York State entities, a super-majority of stakeholders, and the MMU. The NYISO Proposal reasonably balances consumer and investor interests. It will allow the NYISO region to focus on moving forward with New York's clean energy transition instead of litigation.

The Administrative Procedure Act ("APA") requires that Commission actions be based on reasoned decision-making and not be arbitrary or capricious.[104] To the extent that the Commission departs from precedent it must provide a reasoned explanation for changing course.[105] The NYISO is bound to comply with Commission precedents until they are overturned. Accepting the NYISO Proposal would be fully consistent with APA standards. There is no need to justify departing from, or overturning, the Artificial Price Suppression Precedents in this proceeding because the NYISO Proposal can be reconciled with them. The NYISO Proposal properly balances the risks of under-mitigation and over-mitigation as required by existing precedent. At the same time, the NYISO Proposal is responsive to the Commission's emerging preference to narrow the scope of the BSM Rules and to do more to accommodate state climate change policies.

The Commission has previously denied complaints that would have established broad exemptions under the BSM Rules for state-supported resources.[106] Those complaints sought

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[104] *See* 5 U.S.C. § 706.

[105] *See Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Auto Insurance Co*., 469 U.S. 49, 63 (1983); *FERC v. Electric Power Supply Association*, 136 S.Ct. 760, 782 (2016); *Old Dominion Electric Cooperative v. FERC*, 898 F.3d 1254, 1260 (D.C. Cir. 2018); *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995); *Dominion Res., Inc. v. FERC*, 286 F.3d 586, 492 (D.C. Cir. 2002).

[106] *See, e.g.*, *N.Y. State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022 (2015), *reh'g denied*, 154 FERC ¶ 61,088 (2016) (denying request by New York Public Service Commission *et al.* for broad exemption from the BSM Rules for renewable resources); *New York State Pub. Serv. Comm'n, et. al. v. N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,119 (2020) (denying

changes that would have been similar to the Excluded Facility rules that the NYISO is proposing now. But the rejections of those earlier proposals were expressly made without prejudice. They were also based on Commission determinations that complainants had failed to provide sufficient evidence to satisfy their burden of proof under FPA section 206. Earlier exemption proposals were likewise not supported by accreditation improvements. The APA does not prevent the Commission from accepting the NYISO Proposal, which is fully supported by analysis demonstrating that its proposed revisions are just, reasonable, and not unduly discriminatory.

B. The Marginal Capacity Accreditation Market Design

1. Overview

The NYISO's marginal capacity accreditation design would replace Duration Adjustment Factors for storage and other resources and the current quadrennial study for revisiting capacity values. The NYISO would instead review "Capacity Accreditation Factors" for each "Capacity Resource Accreditation Class" annually in advance of each new Capability Year to determine how the NYCA power system reliability, as modeled and approved by the New York State Reliability Council ("NYSRC"), would change through an addition of incremental capacity representing the characteristics of the Capacity Resource Accreditation Class.

The NYISO's current capacity accreditation procedures, which are based on duration adjustment factors for Energy Limited Resources and the TAM enhancements, would remain in place through the Capability Year beginning on May 1, 2023. At that point, the existing provisions would cease to operate. The marginal accreditation design would be implemented annually thereafter.

The main elements of the proposed marginal capacity accreditation market design are discussed in the subsections below.

a. Establishing the Capacity Accreditation Database

The NYISO would use the Installed Reserve Margin ("IRM") and Locational Minimum Installed Capacity Requirements study models, as vetted and established through an open and transparent NYSRC process as the starting database for marginal accreditation evaluations. The relevant NYSRC rules are found in NYSRC Policy 5-15[107] and the process is overseen by NYSRC Installed Capacity Subcommittee.

The NYSRC process for establishing the IRM base case begins more than a year prior to the start of the Capability Year. The supply mix assumed for the IRM model is determined by the NYSRC in accordance with its base case inclusion rules and is fixed once the NYSRC adopts the IRM. This same supply mix is then used by the NYISO when calculating the LCRs. The system as reflected in the final, NYSRC-approved, IRM model base case is ultimately based

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complaint by New York State Public Service Commission seeking exemption from BSM Rules for energy storage resources).

[107] NYRSC Policy 5-15 is available at <*https://www.nysrc.org/PDF/Policies/Policy 5-15.pdf*>.

upon public information indicating what supply is expected to be interconnected and commercially in-service for the upcoming Summer, which is heavily vetted during the year-long process establishing the IRM base case. Sensitivity cases are developed at this point in the NYSRC process to address any uncertainties for any inclusions or exclusions in the base case, such that the NYSRC can use a sensitivity case to inform the base case IRM where there are last minute changes that could impact the supply mix assumptions.

As a result, the IRM base case typically closely resembles the supply mix that actually bids into the NYISO's ICAP Spot Market Auctions. The NYISO's capacity accreditation study is therefore aligned very closely with the current resource adequacy structures underlying the ICAP Market. The alignment ensures that resources continue to receive ICAP payments based on both: (i) how they contribute to reliability as modeled in the IRM and Locational Minimum Installed Capacity Requirement ("LCR") setting process; and (ii) their individual performance or availability.

Once the IRM is adopted by the NYSRC it is filed with the Commission and the NYSPSC. The NYISO then uses this base case to calculate the least-cost set of LCRs for the G-J, New York City and Long Island Localities. The proposed annual accreditation process will proceed at this stage of the process, prior to the seasonal set up for the upcoming Summer Capability Period.

Currently, the NYISO applies a translation factor to convert these IRM and LCR values into a UCAP-based requirement, thereby ensuring Capacity Suppliers are rated on the same standard the LSE procurement requirements are based on. ICAP values will continue to be based upon the lesser of Dependable Maximum Net Capability ("DMNC") or Capacity Resource Interconnection Service ("CRIS") for most resources, with DMNC for intermittent resources such as wind and solar continuing to be reflected as the nameplate MW for such facilities. The NYISO multiplies this number by a duration adjustment factor for energy duration limited resources as currently set forth in the tariff, in order to calculate an Adjusted ICAP value for each resource. This factor is currently set to 1 for all other resources when calculating the Adjusted ICAP for these resource types. These Adjusted ICAP values are then converted to UCAP based upon historic performance or availability data for all resources.[108] Going forward, UCAP calculations will still be calculated by multiplying a resource's ICAP value by its Capacity Accreditation Factor to calculate an Adjusted ICAP value for each resource. Then, to calculate each resource's UCAP value, the Adjusted ICAP Value is multiplied by the individual resource's performance or availability derating factor. The NYISO's calculation of the ICAP/UCAP translation factor will not change as a result of this filing.

[108] For the majority of the current supply mix, this data is from the Generator Availability Data System ("GADS") from the prior two like Capability Periods, but currently for wind and solar this is based upon actual performance during certain peak load hours in the prior like Capability Periods. For Run of River Hydro this value is calculated using its performance during the top 20 peak load hours during the prior five Capability Years. Demand response performance is based upon its actual performance in mandatory events and tests called during the prior two-like Capability Periods.

b. Annual Review

The NYISO proposes to calculate the Capacity Accreditation Factors for each Capacity Resource Accreditation Class every year for each pertinent location using this IRM base case with the system at-criterion. This approach is consistent with the modeling conducted for the IRM and LCRs. The NYISO proposes to perform this study annually to keep pace with the resource changes that the CLCPA requires – staying current with both expected entry and exit of supply. The study will take into account and result in Capacity Accreditation Factors for all resource types, which will include any synergistic impacts on the marginal accreditation factors caused by levels of penetration of each class of resource. It bears emphasizing that all resource classes will be reviewed, including existing conventional capacity resources. In this way, flexible resources, of whatever technology type, that meet the balancing needs of a system with increasing levels of intermittent supply can receive appropriate compensation that reflects the marginal value of their contributions to system reliability. By contrast, inflexible conventional resources that do not help to meet those needs will receive capacity price signals that would encourage them to exit the market.

The annual review will also assess the marginal reliability contributions from each Capacity Accreditation Resource Class towards meeting the NYSRC resource adequacy requirements. The annual review will include locational aspects such that each Capacity Accreditation Resource Class may have different Capacity Accreditation Factors that reflect marginal contribution of the resource class towards resource adequacy based upon where entry of the incremental megawatts is located. This is an important aspect of the locational price signals that the Installed Capacity Market will send to investors and developers.

In addition, the proposed revisions will now require the NYISO to annually review whether the Peak Load Window period continues to serve system reliability or should be modified. Currently this is reviewed within the quadrennial review of duration adjustment factors which the marginal accreditation design is replacing.

c. Capacity Accreditation Factors

The NYISO would review Capacity Accreditation Factors for each Capacity Resource Accreditation Class at the relevant ICAP Market locations. Capacity Accreditation Factors will be calculated using a system "Effective Load Carrying Capability" ("ELCC") or equivalent methodology.[109] The NYISO is using the decades-old definition of ELCC as "[t]he measurement of effective load carrying capability is made at some designated level of reliability,

[109] During market design discussions with stakeholders, the MMU proposed a methodology referred to as Marginal Reliability Improvement ("MRI"). The NYISO intends to work with stakeholders during the "Phase II" process described in Section VII below to compare the ELCC and MRI methodologies as it develops the tools to perform the annual review of Capacity Accreditation Factors.

often the level calculated for the system in a previous year. The effective capability of a new unit is, therefore, the load increase that the system may carry with the designated reliability."[110]

Capacity Accreditation Factors will reflect the marginal reliability contribution of the ICAP Suppliers within each Capacity Accreditation Resource Class toward meeting NYSRC resource adequacy requirements for the upcoming Capability Year. Capacity Accreditation Factors will be applicable to all Resources and/or Aggregations within each Capacity Accreditation Resource Class that has been established in accordance with ISO Procedures. The NYISO would perform the evaluation for each Capacity Resource Accreditation Class at the capacity Locality level. For example, a class may have a different Capacity Accreditation Factor that is applicable to each of the distinct capacity regions where these resources will interconnect. For the New York City and Long Island Localities, resources in a class that are interconnected or interconnecting in those regions will be assigned the Capacity Accreditation Factor for that class and that region, respectively. Similarly, resources interconnected or interconnecting with Zones G-I (the lower Hudson Valley portion of the Zone G-J Locality that excludes New York City) and Zones A-F (the Rest of State portion of the NYCA) will be evaluated separately and can potentially be subject to different Capacity Accreditation Factors. Also, in cases where there are no resources interconnected or interconnecting in one or more of these locations, the NYISO may elect to not evaluate the Capacity Resource Accreditation Class in that location for that year. However, the NYISO would annually establish Capacity Accreditation Factors for resource types consistent with the marginal reliability contribution of each resource type and for locations on the system for all ICAP supply participating in its capacity market.

d. Capacity Resource Accreditation Classes

The NYISO would assign each ICAP Supplier to a Capacity Accreditation Resource Class. All Capacity Accreditation Resource Classes will be evaluated in all relevant ICAP Market locations to determine the applicable Capacity Accreditation Factor to be assigned to ICAP Suppliers of that class in each location. All ICAP Supplier resource types would be assigned a class. Capacity Resource Accreditation Classes may be expanded or contracted as supply mix and technology evolve to reflect new technologies not yet identified or participating in the NYISO's markets. The list of available classes could also change to reflect the complete exit of older technologies through the NYISO's deactivation procedures. Consequently, the NYISO would define Capacity Accreditation Resource Classes each year. Each class will contain a defined set of Resources and/or Aggregations, as identified in accordance with ISO Procedures, with similar technologies or operating characteristics which are expected to make similar marginal reliability contributions toward meeting NYSRC resource adequacy requirements for the upcoming Capability Year.

[110] *See* L. L. Garver, "Effective Load Carrying Capability of Generating Units," in *IEEE Transactions on Power Apparatus and Systems*, vol. PAS-85, no. 8, pp. 910-919, Aug. 1966, doi: 10.1109/TPAS.1966.291652.

2. Benefits of the Marginal Accreditation Market Design

The NYISO's marginal design is a just, reasonable, and not unduly discriminatory improvement over its currently effective valuation metrics.

As noted above in Section IV.B, the MMU recommended that the NYISO develop a marginal accreditation approach in its most recent *State of the Market Report*.[111] The specific recommendation was that the NYISO pursue "ICAP accreditation improvements" that would "facilitate new entry of [Public Power Resources] by recognizing that some resources receive excessive credit for their capacity relative to their marginal reliability value, while ensuring that flexible resources receive appropriate compensation."[112] The MMU explained that:

> The NYISO's current methods to convert resources' ICAP to UCAP rely on simple heuristics that do not accurately reflect the marginal reliability value of certain resource types. Current accreditation methods will become more outdated and inaccurate as the resource mix shifts towards intermittent and duration-limited resources. In reality, the marginal reliability value of resources varies according to their availability during hours when capacity margins are tightest – resources with long lead times and low availability tend to provide less reliability value. Additionally, the capacity value of renewables, storage, and demand response resources vary with increased penetration of these resources. We recommend that the NYISO revise its capacity accreditation rules to compensate resources in accordance with their marginal reliability value.[113]

As discussed in the Mukerji Affidavit, the NYISO reviewed the *State of the Market Report's* analysis and agrees with this recommendation. The NYISO also considered and agrees with the analyses that the MMU presented during the stakeholder process that culminated in this filing (Attachments V and VI to this filing letter). Marginal capacity accreditation in the NYISO would better tailor the calculation of the UCAP values for ICAP Suppliers to their marginal contribution to maintaining the reliability of the system when it is most needed, and thus improve the efficiency of the NYISO's ICAP Market outcomes.

In PJM, the Commission recently accepted what has been described as an average accreditation methodology.[114] There was considerable discussion during the NYISO stakeholder process regarding the relative merits of moving to average versus marginal accreditation. The distinction between the two approaches is not always apparent and the relevant terminology can be complex. Matters are further complicated by the fact that different parties focus on different possible iterations of the average and marginal models.

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[111] *See* 2020 SOM Report at section VII.E.

[112] *Id*. at 85.

[113] *Id*. Executive Summary at vii.

[114] *See PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 (2021).

For purposes of this filing, the NYISO is adopting the description of marginal accreditation that the MMU used in its August 30, 2021 presentation to the stakeholder Installed Capacity Working Group (see Attachment V). Specifically, a marginal accreditation design is one in which each resource is compensated based on the incremental reliability benefit that the next unit of that resource would provide to the system. Marginal valuations are calculated from the impact of an incremental quantity of a given resource type on a reliability metric, *e.g.*, the once in ten-years loss-of load expectation ("LOLE"), relative to that of "perfect capacity."

The NYISO has chosen a marginal capacity accreditation market design instead of an averaging accreditation model for multiple reasons which are discussed below. These reasons are specific to the circumstances and needs of the NYISO region. The NYISO takes no position on the relative merits of average and marginal methodologies in PJM or other regions. Each region should be allowed to develop market rules that reflect regional conditions. The NYISO has determined that its marginal accreditation approach is the best option for the NYISO-administered markets.

Marginal capacity accreditation is well-aligned with the NYISO's wholesale market structures, in part because of the NYISO's relatively short-term capacity market. As noted above in Section III.A, unlike its neighbors, the NYISO sets requirements for the upcoming Capability Year and administers seasonal, monthly and monthly ICAP Spot Market Auctions. In addition, the NYISO's is a single-state region which does not have vertically integrated investor-owned utilities with integrated resource plans participating in its markets. The NYISO believes that using marginal capacity accreditation values will result in more efficient signals for attracting and retaining resources in New York. The marginal approach will send the proper price signals for each class of resources based upon the current system configuration and which resource class is best suited to support grid reliability. It will do so regardless of whether those resources receive out-of-market payments or rely more heavily on capacity market revenues because it will properly signal which resource types are best suited to support grid reliability. Marginal accreditation is compatible with the core NYISO market design principle that wholesale market prices should signal how best to serve the next unit of load or demand rather than ensure that each resource recovers its embedded costs.

As such, the marginal accreditation market design ensures that competitive price signals are available and that the risk of investment falls on the market participant, developer, or investor, and not the consumer. This approach will also provide important feedback to the state for use in setting its targets based upon technology so that system reliability benefits while ultimately reducing capacity market costs and overall costs for consumers.

The MMU's August 30, 2021 presentation analyzed the advantages of marginal over average accreditation. The MMU determined that average accreditation would result in severe inefficiencies and overpayment in the long term. Like the NYISO, the MMU emphasized that marginal accreditation was fundamentally consistent with the marginal cost scheduling and pricing rules that are core features of the NYISO's wholesale market design. For example, energy market sellers are compensated using Locational-Based Marginal Pricing which is based on the marginal cost of serving load.

The MMU further explained that a marginal design would not result in capacity over-procurement because ICAP requirements are determined independently of the capacity accreditation methodology. The supply and demand side of the capacity market are both converted to UCAP using the same derating factor. Over the long term, however, inaccurate accreditation could lead to over-procurement by encouraging inefficient entry.[115]

For example, marginal accreditation would signal if and when storage resources should be built in order to provide additional value to solar resources when the NYISO will have a reliability need after the sun sets. By contrast, adding solar resources that would not allow the system to carry any additional load in response to capacity valuation signals sent by an average approach would be inefficient.

In addition, the MMU showed that: (i) marginal accreditation would not excessively discount intermittent and storage resources;[116] and (ii) it was a mistake to believe that marginal accreditation was not aligned with achieving CLCPA policies because accurate investment signals would no longer be important in New York.[117]

The MMU refuted several claims that have been offered in support of average accreditation. The MMU explained that averaging approaches: (i) can result in inefficient incentives for investment because compensation does not align with a resource's impact on improving reliability; and (ii) excess payments under average accreditation can lead to inflated consumer costs.

The MMU also analyzed the long-term impacts of capacity accreditation on consumer costs and the NYISO-administered markets. That analysis was presented to the stakeholder ICAP Working Group on November 2, 2021 and is included as Attachment VI to this filing letter. The MMU considered the dynamic impact of accreditation on resource investment decisions. It reached three main conclusions. First, that marginal accreditation would result in more efficient signals for investment and lower consumer costs when compared to continuing with the status quo or adopting an average accreditation approach. Second, that marginal accreditation could help guide investment in policy resources at the lowest cost to consumers even when state subsidies supplement resources' Commission-jurisdictional wholesale market revenues. Third, that the advantages of marginal accreditation will become more significant and impactful as the CLCPA requires larger quantities of investment in intermittent resources. This is a very important consideration given the enormous effect that the CLCPA is expected to have on the NYISO's resource mix in the coming years.

The NYISO conducted its own analysis of marginal accreditation and reached conclusions that are broadly aligned with the MMU's. The NYISO evaluation is attached hereto as Attachment VII. It shows that a marginal accreditation design would bring benefits with

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[115] *See* Attachment V at 7-9.

[116] *Id*. at 10-15.

[117] *Id*. at 16-21.

respect to: (i) reliability; (ii) cost impact/market efficiencies; (iii) environment/new technology; and (iv) transparency.

The Mukerji Affidavit endorses and adopts the MMU and NYISO staff analyses demonstrating the benefits of marginal accreditation design and its superiority to average accreditation. The Commission has routinely relied on economic analyses and theory when finding proposed tariff revisions to be just and reasonable.[118] It should follow that precedent here.

The NYISO notes that Commissioner Christie expressed a strong preference for a form of marginal accreditation when he dissented from the July 30, 2021 order accepting PJM's model. Commissioner Christie quoted the MMU's May 2021 testimony in Docket No. AD21-10-000 and asserted that "only a marginal valuation – not average – will accurately produce capacity accreditations for compensation and will deliver the reliability value relied upon by the RTO."[119] Commissioner Christie was also concerned that PJM's accreditation rules did not apply to all resource types.[120] Similarly, Commissioner Danly stated that, "Commissioner Christie may well be—in fact, probably is—correct that a marginal approach to allocating capacity to individual resources would be preferable to PJM's proposed resource-class based averaging mechanism."[121] The NYISO reiterates that it takes no position on PJM's accreditation rules as applied to PJM. At the same time, the NYISO believes that its proposal in this filing addresses the concerns raised by Commissioner Christie and echoed by Commissioner Danly.

Although PJM is a different region with different rules than the NYISO, it is noteworthy that PJM also relied in part on the prospect of improved capacity accreditation to justify its recent revisions to its Minimum Offer Price Rule. As the NYISO does here, PJM argued that improved accreditation would "tend to reduce the capacity value of intermittent resources as their penetration increases" and that this would substantially reduce the impact state-subsidized entry of such resources would have on PJM's capacity auctions.[122]

Finally, as discussed above in Section V.A.2 and in the Mukerji Affidavit, the proposed marginal accreditation design is not just a major market enhancement on its own merits. The NYISO's marginal accreditation revisions also justify relieving Excluded Facilities from the BSM Rules. Marginal accreditation will result "in more efficient signals for attracting and

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[118] *See, e.g.*, Glick/Clements Statement at P 53 (justifying recommendation to accept an aspect of proposed PJM MOPR revisions because they had a "sound basis in economic theory.") *See also id.* at n. 106 (emphasizing that the Commission may rely on economic theory to support its findings in an FPA Section 205 proceeding); *citing Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 109 (2d Cir. 2015); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C. Cir. 2010) (stating that the Commission may make findings "based on 'generic factual predictions' derived from economic research and theory").

[119] *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 (2021), Christie Dissenting at P 9.

[120] *Id*. at P 10.

[121] *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 (2021), Danly Concurring at P 1.

[122] *See* PJM MOPR Revision Filing at 19.

retaining resources in New York, regardless of whether those resources receive out-of-market payments or rely more heavily on capacity market revenues, by properly signaling which resource types are best suited to support grid reliability."[123]

In short, there is ample reason to conclude that the NYISO's marginal accreditation market design is just, reasonable, and not unduly discriminatory on its merits. This is the case without even considering the support that marginal accreditation will provide for the NYISO's revisions to the BSM Rules.

C. ICAP/UCAP Reference Price Translation

1. Overview

Each ICAP Demand Curve is based on a "reference point price," which represents "the estimated cost for a peaking plant for the Rest-of-State region (in the case of the Annual Reference Value for the NYCA) or a Locality (in the case of the Annual Reference Value for a Locality) less an estimate of annual net revenue offsets from the sale of energy and ancillary services for the Rest-of-State region or a Locality, as appropriate."[124] Each "monthly ICAP reference point price is set to the level that would permit a peaking unit to be paid an amount over the course of the year that is equal to the Annual Reference Value."[125]

The ICAP reference point prices are ultimately translated to UCAP reference point prices for use in the ICAP Spot Market Auctions. The NYISO's current practice, in converting an ICAP reference point price to a UCAP reference point price, is to use the system-wide or applicable Locality-wide translation factor used to translate Capacity Requirements to UCAP, rather than the derating factor of the peaking plant used to determine the applicable reference point price.

The MMU has advised that the NYISO's current practice may result in future ICAP Demand Curves being set too high "leading to inefficiently high consumer payments."[126] The MMU explained that the peaking plant, as a new resource, generally has a lower forced outage rate than the average derating (*i.e.*, translation) factor. It warned that the "inconsistency will become more pronounced as additional intermittent resources are added to the system, which would tend to increase the regional average derating factor."[127]

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[123] *Comprehensive Mitigation Review*, NYISO Management Committee at 14 (Nov. 17, 2021).

[124] *See Manual 4: Installed Capacity Manual*, New York Independent System Operator, Inc. (Dec, 2021) at 163, available at <*https://www.nyiso.com/documents/20142/2923301/icap_mnl.pdf/234db95c-9a91-66fe-7306-2900ef905338*> .

[125] *Id.* at 164.

[126] 2020 SOM Report at 63.

[127] *Id.*

Therefore, the NYISO is seeking to modify its approach going forward, and to calculate the UCAP reference point price using the derating factor of the specific peaking plant used to determine that reference point price (and, hence, the applicable ICAP Demand Curve), rather than using a system-wide translation factor. The reason for this is that, as discussed above, the NYISO anticipates substantial market entry of intermittent resources, as well as other resources that have high derating factors. The addition of these resources is expected to cause the overall system translation factor to decrease, potentially significantly. Under these circumstances, using the system translation factor, rather than a plant-specific derating factor, causes the reference point price to increase. The NYISO anticipates that in many cases, the reference point price will increase to the point that it exceeds the annual revenue requirement of the applicable peaking plant. Such an outcome would send inappropriate price signals to the market and encourage market entry in circumstances where it is not warranted.

To accomplish this revision, the NYISO would modify Section 5.14.1.2 of the Services Tariff to specify that, as of the 2024/25 Capacity Year, the NYISO's calculation of the UCAP reference point price "shall utilize the applicable derating factor of the peaking plant used to establish each ICAP Demand Curve...."

In addition, the NYISO expects CLCPA mandates and the changes to be made by the NYISO Proposal to impact the risks facing the proxy peaking plant used to define ICAP Demand Curves. The NYISO considered including tariff changes in this filing to expressly address these risks. But the NYISO concluded that none were necessary because the Services Tariff already requires the NYISO and its independent consultant to account for these risks when estimating the costs of future proxy peaking plants. Exactly how these risks should be reflected in cost estimates is a matter to be decided in the next quadrennial ICAP Demand Curve reset process for the 2025-29 Capability Years. The NYISO is therefore describing this point in this filing solely for informational purposes.

2. Legal Justification

Switching from a system-wide derating factor to using the derating factor of the specific peaking plant that serves as the basis for the reference point price is just and reasonable. The NYISO expects that, in light of the CLCPA and associated New York State policy, intermittent generation and other supply resources with high derating factors will continue to enter the market in substantial numbers in the coming years. This circumstance will drive down the overall, system-wide derating factor, and the use of these lower derating factors, in turn, will cause the reference point prices to rise. In many cases, the resulting reference point prices will be higher than the annual revenue requirement of the applicable peaking plant, and therefore will send inaccurate (and inefficient) price signals to the market. Calculating reference point prices by using the derating factor of the applicable peaking plant, rather than the system-wide derating factor, will help ensure that reference point prices—and the resulting ICAP Demand Curves—more closely reflect actual market entry costs, and therefore do not send inaccurate price signals.

VI. COMMISSION PRECEDENT CLEARLY ALLOWS FOR REGIONAL DIFFERENCES IN ISO/RTO CAPACITY MARKET DESIGNS, INCLUDING BUYER-SIDE MARKET POWER MITIGATION AND CAPACITY ACCREDITATION

The NYISO's Proposal would leave the NYISO with BSM Rules that continue to differ in various ways from those that recently became effective in PJM. Similarly, the NYISO's marginal accreditation framework will differ from what is currently used in PJM and elsewhere.

The Commission has frequently held that different regions may have different market rules that reflect regional circumstances, preferences, and needs. In particular, the Commission has emphasized that this principle allows the NYISO and PJM to have different capacity market designs, and correspondingly different mitigation structures.[128] The Commission's precedent holds that "regional markets are not required to have the same rules" and that "[o]ur determination about what rules may be just and reasonable for a particular market depends on the relevant facts."[129]

The facts pertinent to the NYISO Proposal are distinct from those in other regions. The NYISO seeks to establish broad relief from mitigation for Excluded Facilities with an annually updated marginal accreditation approach endorsed by its MMU and related ICAP Market Demand Curve enhancements. No previous proposal has taken this approach.

The NYISO itself also has characteristics that distinguish it from other markets. As previously noted, the NYISO is a single-state region in which the state is fully committed to an ambitious climate change agenda. There are no interstate cost-shift concerns. The NYISO's methods for establishing the IRM and LCRs, calculating UCAP values, use of a prompt auction

[128] *See, e.g.*, *Calpine Corp. v PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) at n. 94 ("On the basis of the record in this proceeding, the December 2019 Order applies the MOPR to renewable and self-supply resources differently than the Commission recently determined in NYISO. *See N.Y. Indep. Sys. Operator, Inc*., 170 FERC ¶ 61,121 (2020). The NYISO order addressed NYISO's compliance with a 2015 order, which predated the December 2019 Order by over four years. Moreover, the Commission has explained that "regional markets are not required to have the same rules. Our determination about what rules may be just and reasonable for a particular market depends on the relevant facts." December 2019 Order, 169 FERC ¶ 61,239 at P 204 n. 431.); *see also id* at n. 754 ("Specifically, with regard to the NYISO capacity market rules, the Commission has repeatedly noted the differences between the PJM and NYISO capacity markets making different rules appropriate.")

[129] *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121 at n.39 (2020); s*ee also Calpine Corp. v PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 at n.754 ("Specifically, with regard to the NYISO capacity market rules, the Commission has repeatedly noted the differences between the PJM and NYISO capacity markets making different rules appropriate.")

structure, and proposal to apply its new accreditation design to all resource types also obviate certain concerns about marginal accreditation raised in other regions.[130]

In short, the Commission should follow its regional differences precedent and not allow distinctions between the NYISO Proposal, and rules that are or may be adopted in neighboring regions, to stand in the way of accepting the filing in this proceeding.

VII. IMPLEMENTATION TIMETABLE AND THE DEVELOPMENT OF ADDITIONAL ACCREDITATION PROCEDURES

The NYISO Proposal is just, reasonable, and not unduly discriminatory. All of the tariff revisions included in the NYISO Proposal are complete. There is no need for the NYISO's proposed tariff language to be clarified or expanded.

The NYISO intends to implement its changes to the BSM Rules in time for Class Year 2021 projects to be evaluated with the Excluded Facility rule in effect. As the Commission has previously recognized, the BSM Rules and the NYISO's Class Year interconnection study process are closely integrated.[131] The BSM Rules will next be applied to new entrants into Mitigated Capacity Zones that are members of Class Year 2021. During the stakeholder process that resulted in this filing, the NYISO informed stakeholders that it expected this to occur in early 2022. More recently, the NYISO announced that its best estimate was that initial determinations under the BSM Rules for Class Year 2021 projects are likely to be made in July or August of 2022.

The NYISO requests to implement the marginal capacity accreditation design for the Capability Year that begins May 1, 2024. To achieve that implementation date, the NYISO is proceeding with the necessary work in three phases. "Phase 1" includes the submission of tariff changes for the new design that are included in this filing and the Commission's acceptance of them. "Phase 2" will involve the development of non-tariff implementation details and related procedures pertaining to the marginal capacity accreditation design. Phase 2 is expected to begin

[130] *See, e.g.*, *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 at P 70 (2021) (addressing issues regarding the inapplicability of PJM's "adjusted class average" accreditation approach to "Unlimited Resources" that could maintain energy output throughout an operating day).

[131] *See, e.g.*, *Motion to Intervene and Comments of the New York Independent System Operator, Inc*., Docket No. ER18-1301-000 at 6-7 (April 18, 2018) ("The initial determination for each Examined Facility is issued prior to the commencement of the Class Year Initial Decision Period."); *Bayonne Energy Center, LLC*, 163 FERC ¶ 61,095 at P 31(2018) (acknowledging NYISO concerns that altering deadlines under the BSM Rules could disrupt the Class Year process). *See also Proposed Enhancements to In-City Buyer-Side Capacity Market Power Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirements*, Docket No. ER10-3043-000 (Sept. 27, 2010) (explaining that under the currently effective version of the BSM Rules, "potential entrants will receive exemption and Offer Floor information that may be critical to their project development decisions in advance of the deadline for deciding whether to accept Project Cost Allocations, or Revised Project Cost Allocations, under OATT Attachment S."); *N.Y. Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,178 (2010) (conditionally accepting the tariff revisions proposed in the NYISO's September 27, 2010 filing).

shortly and continue throughout 2022 as part of the NYISO's "Improving Capacity Accreditation Project." It is consistent with the Commission's "rule of reason" policy for the additional implementation details and technical specifications to be developed in Phase 2 to be added to the NYISO manuals and ISO Procedures instead of the tariff. [132] "Phase 3" will focus on the completion of the first capacity accreditation review, called for in the proposed tariff revisions, as part of the NYISO's "Capacity Value Study" project.

Similarly, the NYISO intends to implement the ICAP/UCAP Reference Price translation changes concurrent for the next quadrennial ICAP Demand Curve reset process and that will begin to affect capacity auction prices for the Capability Year that begins on May 1, 2024.

VIII. DESCRIPTION OF THE NYISO'S PROPOSED TARIFF REVISIONS

The following sections summarize and describe the NYISO's proposed tariff revisions on a section-by-section basis in order to facilitate the Commission's review.

A. Revisions to the BSM Rules

The NYISO is proposing a series of amendments to Attachment H of the Services Tariff to implement the exclusion of certain Resources and UDR projects from review and mitigation under the BSM Rules.

In Section 23.2.1, the NYISO proposes to add a new definition of "Excluded Facilities" to identify the Resource types that will no longer be subject to either review under the BSM Rules or an Offer Floor. The new definition specifically excludes from BSM review and mitigation Resources that use technology identified in the CLCPA. This includes wind, solar, storage, hydroelectric technology (including tidal, ocean, and wave generation), geothermal, and fuel cells powered by non-fossil fuels. This list also includes demand response (including both Special Case Resources and Distributed Energy Resources), which for many years have been identified as playing a major role in the State's clean energy policy, and NYISO with its stakeholders believe will continue to provide significant contributions to the State's efforts to achieve its objectives.

In order to allow for innovation and the evolution of clean energy resources in the NYCA the new definition of "Excluded Facilities" also allows the NYISO to include other Resource types that satisfy CLCPA goals beyond those specified in the definition if the project owner is able to demonstrate that (1) the technology type is either specifically identified by the CLCPA or

[132] The Commission's long-established "rule of reason" policy recognizes that there are an "infinitude of practices affecting rates and service" so the "statutory directive must reasonably be read to require the recitation of only those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous." *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985). The Commission has also recognized that implementation details and technical specifications need not be on file under the "rule of reason" especially in contexts where ISOs/RTOs are implementing complex processes thar require reasonable flexibility. *See, e.g.*, *Hecate Energy Greene County 3 LLC v. N.Y. Indep. Sys. Operator, Inc.*, 177 FERC ¶ 61,121 at P 46 (2021).

publicly identified by New York State as supporting the goals of the CLCPA, (2) the project/facility has a contract with NYSERDA or other state entity which is executed to advance the goals of the CLCPA, or (3) the project or facility is eligible to receive a contract with New York State or its agents (*e.g.*, NYSERDA) to support the goals of the CLCPA. In order to demonstrate that the project meets these criteria, the owner/developer must provide the NYISO with a certification that is provided in the amendments to Section 23.4.5.7.5 of the Services Tariff, which is discussed further below.

The NYISO also proposes to amend Section 23.2.1 to modify the definition of "Examined Facility" in order to eliminate references to generator and resource types that will be "Excluded Facilities" going forward. These modifications (1) delete certain existing language that will be no longer pertinent that clarifies how BSM examinations will apply to the Examined Facility(ies) that comprise Co-located Storage Resources, Intermittent Power Resources, and Energy Storage Resources, and (2) add language clarifying that the Resources covered under the definition of "Excluded Facility" shall not considered to be "Examined Facilities." Given that the NYISO's proposal now obviates the need for a Renewable Exemption, as described above, Section 23.2.1 also is being amended to delete the terms "Exempt Renewable Technology," "Incremental Regulatory Retirement," "Minimum Renewable Exemption Limit," "Qualified Renewable Exemption Applicant," "Renewable Exemption Applicant," "Renewable Exemption Bank," and "Renewable Exemption Limit." These definitions all pertain to the current Renewable Exemption provisions found within section 23.4.5.7.13 of the Services Tariff, which is being supplanted by this proposal to create a class of Excluded Facilities which overlaps with the resource technologies currently eligible to receive a Renewable Exemption.

A key component of the new exemption provisions is the use of a self-certification by a project owner that is developing a Resource technology that is not specifically identified in 23.2.1 in order to confirm that the Project qualifies as an "Excluded Facility" under Section 23.2.1. Section 23.4.5.7.5 of the Services Tariff currently addresses the mitigation of demand response resources participating in the NYISO markets as SCRs. However, going forward, demand response resources will now become Excluded Facilities eliminating the need for BSM provisions to evaluate SCRs for an offer floor. This section will now provide the self-certification requirements for Excluded Facilities. The self-certification requirement, and the specific terms of the self-certification form, are similar to those that the Commission has authorized the NYISO to use under its existing Competitive Entry Exemption and Self-Supply Exemption.[133]

Specifically, the NYISO proposes to replace the existing language in Section 23.4.5.7.5, with a self-certification and acknowledgment form for Excluded Facilities. The self-certification must be provided by an officer of the entity with responsibility for development, ownership, or operational control of the Resource and with personal knowledge of the facts asserted in the self-certification. The person executing the self-certification form must attest, in detail, to the basis for claiming Excluded Facility status, provide supporting documentation including but not limited to requests for proposals and contracts issued by New York State, and must agree to

[133] *See* self-certification provisions in Services Tariff § 23.4.5.7.9 (Competitive Entry Exemption) and .14 (Self Supply Exemption).

assist the NYISO with any follow-up information requests or inquiries that are necessary to confirm the Resource's status as an Excluded Facility. The person executing the self-certification form also must specifically certify that she or he understands that the filing of false, misleading, or inaccurate information, or the failure to cooperate with the requests of the NYISO will result in the NYISO denying Excluded Facility status to the relevant Resource—and hence the potential application of the BSM Rules to the Resource—and may result in a Commission enforcement action and the levying of civil penalties against the Resource's owner.

The self-certification provisions contain the certification and acknowledgement form and several implementing provisions that were developed closely with stakeholder feedback. In particular, the provisions provide for the timing of the NYISO's receipt of self-certification, which is tied to the start of the Class Year Study or Expedited Deliverability Study of new projects requesting CRIS or requests for Additional CRIS. The proposed tariff language provides a transition period of 21 days for projects that are currently members of Class Year 2021. Specifically, any project developers whose projects are not explicitly defined as Excluded Facilities in Class Year 2021 "*must certify to their Excluded Facility Status, certification shall be submitted to the NYISO with the request to be considered as an Excluded Facility within twenty-one calendar days from [ ], the effective date of this tariff section and (ii) as noted in 23.4.5.7.5.1.1 below*." Upon receiving an order accepting this tariff provision, the NYISO will make a compliance filing to insert the actual effective date in place of the brackets. The tariff provisions also require the NYISO to consult with the MMU prior to determining that a Project is an Excluded Facility. In addition, Section 23.4.5.7.5.1.1 applies to projects that are subject to an offer floor, that later may qualify as Excluded Facilities, and allows for the submission of self-certifications at any time.

Section 23.4.5.7.5.2 of the Services Tariff requires that the NYISO post on its website a list of all Excluded Facilities and update this list to reflect any changes that occur. Section 23.4.5.7.5.3 was added to the tariff section to make abundantly clear that providing false or misleading information is a violation of the NYISO's tariff.

Finally, the NYISO proposes a series of additional amendments throughout Attachment H of the Services Tariff in order to ensure that the new exclusions from BSM review and mitigation are implemented clearly, and without uncertainty or confusion. These additional edits are as follows:

- Section 23.4.5.7 – The NYISO proposes to add and revise the tariff language to clarify that an Excluded Facility will not be subject to an Offer Floor, and delete the reference related to Special Case Resources, which will be an Excluded Facility going forward.

- Section 23.4.5.7.2 – The NYISO proposes to delete language pertaining to Examined Facilities seeking to participate as a Co-located Storage Resource ("CSR"). CSRs will be comprised of Excluded Facilities going forward. In addition, language pertaining to the Renewable Exemption is being deleted.

- Section 23.4.5.7.3. – The NYISO proposes to replace the term "Project" with the term "Examined Facility" in several locations to avoid confusion going forward, to delete references to CSRs being comprised of Examined Facilities found in Section 23.4.5.7.3.4, and to add clarification that Section 23.4.5.7.3.8 only applies to UDR Projects which are Examined Facilities.

- Section 23.4.5.7.6 – The NYISO proposes to delete language pertaining to the Renewable Exemption provisions currently found in the BSM Rules, to delete language regarding the application of derating factors for wind and run of river hydro found in Section 23.4.5.7.6.3, and to delete Section 23.4.5.7.6.10, which pertains to Examined Facilities participating as a CSR.

- Section 23.4.5.7.7 – The NYISO proposes to include language with respect to Excluded Facilities not being subject to an offer floor and clarify the remaining language regarding grandfathered exemptions from BSM Offer Floors for existing facilities prior to March 7, 2008 or June 29, 2012 in New York City, or other Mitigated Capacity Zones, not New York City, respectively.

- Section 23.4.5.7.3.8 – The NYISO proposes to add language clarifying that the section is applicable only to a Generator or UDR project in a Mitigated Capacity Zone that is not an Excluded Facility (*i.e.*, an Examined Facility).

- Section 23.4.5.7.9.3.2 – The NYISO proposes to delete reference to the Renewable Exemption in the context of requests for Competitive Entry Exemption.

- Section 23.4.5.7.10 – The NYISO proposes to replace "Project" with "Examined Facility" in order to promote clarity.

- Section 23.4.5.7.13 – The NYISO proposes to delete this section, which addresses the Renewable Exemption, in its entirety.

- Section 23.4.5.7.14.1 – The NYISO proposes replace the phrase "Generator or UDR Project" with "Examined Facility" for clarity, and to remove language pertaining to Co-located Storage Resources requesting a Self-Supply Exemption.

- Section 23.4.5.7.15 – The NYISO proposes to replace the term "Excluded Units" with "Omitted Units" to promote clarity and avoid confusion with the "Excluded Facility" definition.

B. Marginal Capacity Accreditation Market Design

To implement the new capacity accreditation rules described above, the NYISO proposes to amend Section 2.3 of the Services Tariff to add two defined terms – "Capacity Accreditation Factor" and "Capacity Accreditation Resource Class."

A "Capacity Accreditation Factor" is defined, in relevant part, to mean the "factors, set annually by the ISO in accordance with Section 5.12.14.3 and ISO Procedures, that reflect the marginal reliability contribution of the ICAP Suppliers within each Capacity Accreditation Resource Class toward meeting NYSRC resource adequacy requirements for the upcoming Capability Year." The definition provides further that "Capacity Accreditation Factors for each Capacity Accreditation Resource Class will be determined by the ISO for Rest of State, G-J Locality (excluding Load Zone J), NYC Locality, and Long Island Locality," and that "Capacity Accreditation Factors are applicable to all Resources and/or Aggregations within each Capacity Accreditation Resource Class that has been established in accordance with ISO Procedures."

The term "Capacity Accreditation Resource Class" means a "defined set of Resources and/or Aggregations, as identified in accordance with ISO Procedures, with similar technologies and/or operating characteristics which are expected to have similar marginal reliability contributions toward meeting NYSRC resource adequacy requirements for the upcoming Capability Year." The definition provides further that "[e]ach Capacity Accreditation Resource Class will be evaluated through the annual review detailed in Section 5.12.14.3" and that "[e]ach Installed Capacity Supplier will be assigned a Capacity Accreditation Resource Class."

The NYISO also would revise Section 5.12.6.2 of the Services Tariff to clarify that the existing approach for calculating UCAP for Intermittent Power Resources and Limited Control Run-of-River Hydro Resources will continue until the beginning of Capability Year 2024, and that the new approach for calculating UCAP, using marginal reliability contributions as a determining factor, will be used beginning with the Capability Year that begins in May 2024.

The NYISO also would revise Section 5.12.14 of the Services Tariff to provide detail regarding the new market design for capacity accreditation. Section 5.12.14 would be revised to clarify that, as of the Capability Year that begins in May 2024, "ICAP Suppliers will have their Adjusted ICAP calculated pursuant to Section 5.12.14.2 using the applicable Capacity Accreditation Factor." The amendment to Section 5.12.14 provides further that "Resources with a limited run-time must elect an Energy Duration Limitation that is less than or equal to the Resource's ability to demonstrate sustained output at its qualified MW amount and will use the corresponding Capacity Accreditation Factor." The revised Section 5.12.14 also provides that "Resources with an Energy Duration Limitation must fulfill the availability requirements given in Section 5.12.7 for the duration of the Peak Load Window."

In conjunction with these amendments to Section 5.12.14, the NYISO proposes to revise Section 5.12.14.2 to address the annual review of the Capacity Accreditation Factors. Specifically, the NYISO proposes to delete the existing Section 5.12.14.2, which addresses the existing quadrennial review of Capacity Values of Resources with Energy Duration Limitations, and replaces that provision with a new Section 5.12.14.2 that addresses the annual review of Capacity Accreditation Factors. In particular, Section 5.12.14.2 would specify that, beginning "with the Capability Year that begins in May 2024 and occurring every year, the ISO shall review the existing Capacity Accreditation Factors established for each Capacity Accreditation Resource Class and assess for the upcoming Capability Year the marginal reliability

contributions of each Capacity Accreditation Resource Class toward meeting NYSRC resource adequacy requirements."

Under new Section 5.12.14.2, the "annual review shall: (i) use the IRM/LCR study model that is approved by the NYSRC for the upcoming Capability Year as a starting database, (ii) be performed at the conditions that reflect the expected NYCA system that meets the resource adequacy criterion, (iii) develop Capacity Accreditation Factors for all Capacity Accreditation Resource Classes that reflect the marginal reliability contributions toward meeting NYSRC resource adequacy requirements, and (iv) be performed for Rest of State, G-J Locality (excluding Load Zone J), NYC Locality, and Long Island Locality to the extent there exists an ICAP Supplier or projected ICAP Supplier in the given Capacity Accreditation Resource Classes in the applicable location, as specified in ISO Procedures." The new Section 5.12.14.2 also provides that "[i]n conjunction with this review, the ISO shall review the Peak Load Window associated with the bidding requirements for Resources with Energy Duration Limitations and modify the Peak Load Window accordingly, pursuant to ISO Procedures."

C. ICAP/UCAP Reference Price Translation

In order to modify the methodology that the NYISO uses to calculate the reference point prices that serve as the basis for ICAP Market Demand Curves, *i.e.*, the UCAP Demand Curves, and to use the derating factor of the applicable peaking plant, rather than the system-wide derating factor that is currently used, the NYISO proposes to amend Section 5.14.1.2 of the Services Tariff. The NYISO's new language would specify that "[b]eginning with the 2024/2025 Capability Year, the aforementioned translation shall utilize the applicable derating factor of the peaking plant used to establish each ICAP Demand Curve, as determined during the periodic review conducted pursuant to Section 5.14.1.2.2."

IX. STAKEHOLDER REVIEW

This filing was developed through an extensive and comprehensive stakeholder process conducted under the NYISO's established shared governance procedures. The NYISO's overall "Comprehensive Mitigation Review" stakeholder process began in 2020. Stakeholder discussions that led directly to this filing began in April 2021 and the NYISO held nearly twenty stakeholder meetings on the subjects addressed in this filing in total.

The NYISO Proposal incorporates significant stakeholder input and strikes the balance between investor and consumer interests that the FPA requires. The NYISO modified its approach over the course of the stakeholder process. Adjustments ranged from broad changes to the core structure of the NYISO Proposal to specific modifications to the wording of the self-certification provision that were approved at the November 17, 2021 meeting of the stakeholder Management Committee.

The NYISO's stakeholder Management Committee approved the NYISO Proposal at its November 17, 2021 meeting,[134] where 82.03% of stakeholders voted in favor (with abstentions), far above the 58% stakeholder vote required for the NYISO to file tariff revisions under Section 205 of the FPA. New York State entities, municipalities and small consumers, consumer protection organizations, the New York Transmission Owners, and many generators and other suppliers voted for the NYISO Proposal.

Of particular note, the Independent Power Producers of New York ("IPPNY") submitted multiple comments during the stakeholder process which emphasized the importance of taking a balanced approach that avoided both over- and under-mitigation.[135] IPPNY urged the NYISO to include the marginal accreditation design and the ICAP/UCAP reference price level changes along with its proposed revisions to the BSM Rules.

No stakeholder exercised its right to appeal the Management Committee's approval to the NYISO's independent Board of Directors. The Board approved the NYISO Proposal at its December 2, 2021 meeting. Although certain stakeholders might have preferred that the NYISO take a different approach, the NYISO is only authorized to file the NYISO Proposal as it was accepted by the Board and Management Committee.

Finally, NYISO Proposal was developed in close collaboration with the MMU. The NYISO anticipates that the independent MMU will submit generally supportive comments on this filing.

X. REQUESTED EFFECTIVE DATE

The NYISO respectfully requests that the Commission issue an order within sixty days, making this filing effective one day after the expiration of the standard sixty-day statutory notice period, *i.e.*, on March 6, 2022. As noted above, it is very important that the BSM Reforms and Phase 1 accreditation improvements be implemented during Class Year 2021 to avoid the risk that resources that serve CLCPA goals will be over-mitigated under the currently effective BSM Rules. It currently appears that the Class Year 2021 mitigation and Offer Floor determinations will be made in July or August of 2022. But the NYISO will need some time after a Commission order accepting this filing to complete the preparations necessary to implement the Excluded Facility rules in time for the Summer. A timely Commission order is also necessary so that: (i) the NYISO can move forward with the work that needs to be completed for Phases 2 and 3 of the

[134] The NYISO has also subsequently made minor ministerial corrections to the tariff language which were presented and approved by the chairs of the Business Issues and the Management Committee.

[135] *See, e.g.*, *Comments on Comprehensive Mitigation Review*, IPPNY (Nov. 3, 2021) ("IPPNY continues to emphasize that any proposed revisions to the BSM Rules and an enhanced capacity accreditation process **must be filed with FERC for approval as a comprehensive and balanced set of revisions** to ensure suppliers are neither under nor over-compensated . . .") (emphasis in original) < *https://www.nyiso.com/documents/20142/25835955/IPPNY%20Comments%20-%20NYISO%20Comprehensive%20Mitigation%20Review%20-%20Nov%202021.pdf/fa3826f7-d173-4afb-3e6b-55491ff837cf*>.

marginal accreditation design; and (ii) market participants and investors will have as much certainty as possible, as soon as possible, regarding the capacity market rules in New York.

As discussed above in Section VII, certain of the NYISO's marginal accreditation revisions would first be implemented as part of the NYISO's administration of the capacity market beginning in late 2023 or early 2024. These provisions would first have a direct impact on the capacity auctions held for the Capability Year that commences on May 1, 2024. Each of the proposed tariff provisions that would first be implemented after March 6, 2022 includes language specifying its own implementation date. The NYISO is requesting that each of these provisions become legally effective on March 6, 2022 along with the rest of the NYISO Proposal.

XI. SERVICE

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

XII. CONCLUSION

The NYISO respectfully requests that the Commission accept the NYISO Proposal without imposing conditions or initiating any further procedures. The Commission should make all of the NYISO Proposal's proposed revisions effective on March 6, 2022.

Respectfully Submitted,

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