

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

New York Independent System Operator, Inc.))))	ER16-1404-002
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**COMMENTS OF THE AMERICAN WIND ENERGY ASSOCIATION,
THE ALLIANCE FOR CLEAN ENERGY NEW YORK,
THE NATURAL RESOURCES DEFENSE COUNCIL,
SUSTAINABLE FERC PROJECT, AND THE SOLAR COUNCIL**

Pursuant to Rule 213 of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“ Commission”), the American Wind Energy Association (“AWEA”), the Alliance for Clean Energy New York (“ACE NY”), the Natural Resources Defense Council (“NRDC”), Sustainable FERC Project (“Sustainable FERC”), and the Solar Council (“Council”)² (collectively, “Clean Energy Advocates”)³ respectfully submit this response to the New York Independent System Operator’s (“NYISO”) April 7, 2020 compliance filing (“Compliance Filing”).⁴ NYISO seeks to implement the Commission’s instructions regarding an exemption for renewable energy resources from Buyer-Side Mitigation (“BSM”) adopted in the Commission’s February 2020 Compliance Order.⁵ For the reasons described herein, the Commission should require further refinements to NYISO’s proposal to fully reflect the lack of ability or incentive for renewable resources to suppress capacity prices in NYISO’s mitigated zones.

¹ 18 C.F.R. § 385.213 (2019).

² The Solar Council is a group of companies participating in AWEA’s RTO Advisory Council that own, operate, develop, and finance solar projects and act, in coordination with AWEA, to advance joint goals before the Federal Energy Regulatory Commission and the nation’s regional transmission markets and independent system operators.

³ All of the Clean Energy Advocates have timely and independently sought intervention in this proceeding, and their respective bases for intervention are not reproduced here.

⁴ Compliance filing of NYISO re: Order No. 845 and 845-A revisions to LFIP and LGIA, Docket No. ER16-1404 (April 7, 2020) (“Compliance Filing”).

⁵ *N.Y. State Pub. Serv. Comm’n v. N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,121 (2020) (“Compliance Order” or “Order”).

I. BACKGROUND

On October 9, 2015, the Commission granted in part, and denied in part, a complaint filed by the New York Public Service Commission, New York Power Authority, and New York State Energy Research and Development Authority against NYISO alleging that its BSM rules as applied to renewable and other non-fossil fuel resources were unjust, unreasonable, or unduly discriminatory or preferential, and which sought exemptions for certain renewable and self-supply resources.⁶ As part of its order, the Commission required NYISO to make a compliance filing to revise the rules governing BSM in NYISO’s Market Administration and Control Area Services Tariff to exempt certain renewable and self-supply resources. NYISO submitted the required compliance filing on April 13, 2016. NYISO’s filing included a 1,000 megawatt (“MW”) exemption for renewable resources (“Renewable Exemption”).⁷

In July 2019, NYISO filed a motion asking the Commission to act on the April 2016 Filing because it anticipated that multiple resources would, for the first time, seek Renewable Exemptions in Class Year 2019.⁸ On February 20, 2020, the Commission conditionally accepted the April 2016 filing, but required NYISO to make substantive changes to both the proposed Renewable Exemption and self-supply exemption.⁹ On April 7, 2020, NYISO submitted its Compliance Filing.

⁶ *N.Y. Pub. Serv. Comm’n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at P 2 (2015) (Complaint Order), *reh’g denied*, 154 FERC ¶ 61,088 (2016) (“Rehearing Order”).

⁷ New York Independent System Operator, Inc., Compliance Filing and Request for Commission Action No Later Than June 8, 2020, Docket No. ER16-1404-002 (April 7, 2020) (“Compliance Filing”).

⁸ Motion Requesting Commission Action on Compliance Filing, Notice of Implementation Plans, and Conditional Request for Tariff Waivers of the New York Independent System Operator, Inc., Docket No. ER16-1404-000 (July 19, 2019).

⁹ *See* Compliance Order.

A. Compliance Order Summary

The Commission's Compliance Order rejected NYISO's proposed 1000 MW cap (measured in Installed Capacity, or ICAP) on renewable resources that can qualify for the renewable exemption in a single Class Year. While noting its general support for a cap,¹⁰ the Commission directed NYISO to submit a revised MW cap that would be: "(1) narrowly tailored to the mitigated capacity zones, and not based on the entire [New York Control Area]; and (2) based on [Unforced Capacity] UCAP rather than ICAP."¹¹ The Commission specifically noted that "a MW cap limits the risk that the renewable resources exemption will significantly impact market prices and it is such limitation that makes this tariff revision just and reasonable." It further urged NYISO to be "mindful of the relationship between: (1) the size of the MW cap; and (2) the limit the MW cap imposes on the renewable resource exemption's impact to market prices."¹²

B. Compliance Filing Summary

In response to the Compliance Order, NYISO proposes to establish a formula to calculate "Renewable Exemption Limits" for each Mitigated Capacity Zone—instead of attempting to define a single static cap—to allow for a dynamic limit that is a function of the market conditions occurring in each Mitigated Capacity Zone at the time that a Renewable Exemption Limit is applied. Under NYISO's proposal, the Renewable Exemption Limit for each mitigated locality equals the greater of: load forecast changes, plus regulatory UCAP retirements, plus unforced capacity reserve margin ("URM") impact due to renewable entry; or a market price impact of no more than \$0.50/kW-month.¹³ NYISO contends that its proposed formulaic approach is

¹⁰ *Id.* at P 48.

¹¹ Compliance Order at PP 18, 48.

¹² *Id.*

¹³ Compliance Filing at pp. 6-7.

“narrowly tailored” to the Mitigated Capacity Zones because it accounts for each of the factors relevant to determining the capacity price impacts of renewable resource entry and that it will ensure the Renewable Exemption will not “significantly impact” capacity market prices.¹⁴

NYISO seeks FERC approval of its proposed compliance revisions by June 8, 2020, and for them to go into effect one day thereafter (*i.e.*, on June 9, 2020), so that it can make determinations under the BSM Rules, including eligibility for exemptions, for Class Year 2019 projects without disrupting its current schedule or creating significant uncertainty.¹⁵

II. COMMENTS OF THE CLEAN ENERGY ADVOCATES

A. Buyer-Side Mitigation of Renewable Resources Remains Unnecessary and Unjustified

At the outset, Clean Energy Advocates reiterate their opposition to the entire concept of buyer-side market power mitigation, particularly as applied to state-supported clean energy resources. The Commission’s 2015 finding that “it is unjust, unreasonable, or unduly discriminatory or preferential to apply NYISO’s buyer-side market power mitigation rules to certain narrowly defined renewable and self-supply resources” remains just as valid today as it was then. Contrary to the very name of the NYISO rule at issue, there is no buyer-side market power capable of price suppression that requires mitigation in this instance. As the Commission found, based on the evidence in the record, renewable energy and self-supply resources “have limited or no incentive and ability to exercise buyer-side market power to artificially suppress [installed capacity (ICAP)] market prices”¹⁶ It is clear that New York State’s clean energy

¹⁴ Compliance Filing at p. 6.

¹⁵ *Id.* at p. 2.

¹⁶ *N.Y. Pub. Serv. Comm’n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, P 2 (2015) (Complaint Order), *reh’g denied*, 154 FERC ¶ 61,088 (2016) (Rehearing Order), *pet. for review pending sub nom. Entergy Nuclear Power Mktg., LLC v. FERC*, No. 16-1107 (filed Apr. 5, 2016 D.C. Cir.).

policies are motivated by the imperative to address climate change, and not by any desire to suppress the market price of electricity. BSM should not be applied to renewable generation developed consistent with these legitimate state policies.

Clean Energy Advocates' comments on the NYISO's exemption proposal therefore should be interpreted as narrowly focused on the Compliance Filing itself, and do not imply any support for the general concept of applying BSM to renewable generation facilities. The record in this proceeding does not reflect any incentive or ability for renewable resources, even those located in mitigated zones, to suppress capacity market prices.¹⁷ In short, this proceeding requires NYISO to develop a solution to a problem that does not exist. Having noted this fundamental flaw, Clean Energy Advocates offer the following comments on NYISO's Compliance Filing.

B. NYISO's Proposed Treatment of Regulatory Retirements Should be Broadened

Clean Energy Advocates support allowing retiring capacity to be replaced by renewables under an exemption from BSM. However, NYISO's concept of regulatory retirements is unnecessarily constrained, and should be expanded as detailed below.

1. "Direct" Regulatory Retirements Are Indistinguishable in Practice from Other Retirement Decisions

NYISO limited its consideration of retirements eligible for offsets from exempt renewable resources "to reflect incremental retirements attributable to 'direct' regulatory action that has taken place since the prior study period."¹⁸ This approach uses the logic that governmental actions that have the effect of lowering the market price of capacity (such as clean energy programs) should be offset by governmental actions that have the effect of raising the

¹⁷ See, e.g., *PJM Interconnection, LLC*, 117 FERC ¶ 61,331, at PP 34, 103–104 (Dec. 22, 2006).

¹⁸ Compliance Filing at p. 8.

market price of capacity. However, in considering the price impact experienced by the sellers in the market, it is far more logical to use a formula accounting for *all* retirements. Every resource retirement, whether caused by regulatory actions or by other factors, tightens the demand/supply balance and serves to raise market prices. If the megawatt value for renewable exemptions is tied to the total quantity of retiring resources, the net effect of retirements and exempt renewable generators that enter the market is that suppliers in the market experience no change in market prices over time. Moreover, as Clean Energy Advocates describe below, such an approach leaves room for additional renewable exemptions without violating the Commission’s requirement of avoiding an “significant” price impact.

Additionally, determining whether a “direct” regulatory action was a but-for cause of a resource retirement leaves NYISO or the Commission in the undesirable position of parsing the various factors that play into retirement decisions that in many cases may be difficult to determine. Retirement decisions are made after accounting for many factors, such as state and federal laws and policies, fuel prices, projected energy demand, competition, revenue needs. A “direct” regulatory action is just one of those factors in any retirement, just as state policies are just one factor for new renewable project entry. In any event, the precise rationale for a retirement is irrelevant for the purpose of determining capacity price impacts. The Commission should therefore direct NYISO to alter its proposed formula for renewable exemptions to count retirements, not just those that can somehow be tied to “direct” regulatory actions.

2. Summer Plant Shutdowns Should be Treated as Retirements

Some thermal generators in Zone J may respond to recently finalized state regulations by the Department of Environmental Conservation concerning seasonal NO_x emission limits by shutting down in summer months (when ozone emissions are high) but remaining online in

winter months.¹⁹ Clean Energy Advocates’ understanding is that NYISO does *not* intend to count such plants as retired for the purpose of its renewable exemptions calculation. However, NYISO’s peak load occurs during summer months. Since these generators are treated as unavailable in peak summer months, they should be ineligible to sell capacity during the summer capability period. Accordingly, their departure from the summer capacity market will raise the price of summer capacity. These summer shutdowns should therefore be counted as retired for the purpose of the renewable exemption’s computation for two reasons.

First, even though they are not technically retired, the effect of unavailable units on summer capacity prices is the same *as if* they were retired. Counting them as the equivalent of retired for the purposes of the renewable exemption computation is consistent with NYISO’s proposed principle of offsetting effects (i.e., the net effect of plants leaving the market and renewable generation entering the market is *de minimis*). Second, NYISO’s treatment risks incenting the potential exercise of market power by incumbent generation owners with multiple generation resources. Plants that are otherwise uneconomic can be kept open just for the winter months because the resulting summer capacity price increase (caused by the NYISO proposal’s failure to allow renewables to fill the summer gap for unavailable resources) would boost summer capacity revenues for the remainder of the generation owner’s portfolio.

Accordingly, Clean Energy Advocates urge the Commission to instruct NYISO to treat resources that are unavailable in summer months as retired for purposes of the renewables exemption from BSM.

¹⁹ See New York Dep’t of Env’tl Conservation Regulations, Subpart 227-3.5(a) (compliance options) (“‘Ozone season stop.’ An owner or operator of an existing SCCT may opt to comply with this Subpart by not operating the SCCT during the ozone season. The ozone season stop provision must be included as an enforceable permit condition in a final permit or permit modification issued prior to the applicable compliance deadline of this Subpart.”), available at <https://www.dec.ny.gov/regulations/116185.html>.

3. To the Extent the Commission Adopts the NYISO’s Regulatory Retirement Concept, Additional Types of Regulatory Actions Over a Longer Timeframe Should be Eligible

As noted above, Clean Energy Advocates oppose NYISO’s proposal to solely account for ‘direct’ regulatory retirements in its renewable exemption computation and prefer that all retirements be used. However, in the event that the Commission does adopt a ‘regulatory retirements’ approach, several improvements are necessary.

First, the approach’s specification of what constitutes a “direct” regulatory action should be broadened. NYISO’s proposal limits regulatory retirements to those that are in response to “regulations or statutes.”²⁰ This is excessively narrow. Much of the electric industry restructuring that has occurred in New York took place through orders of the New York Public Service Commission, and not through regulations or statutes. A better definition would be one that follows the language in NYISO’s April 7 letter to the Commission. In it, NYISO refers to “a public policy decision or action *external* to the market”²¹ and to “a new regulatory action.”²² Important regulatory actions that induce retirements could be missed if the mechanism incorporates the overly narrow terms of NYISO’s proposed tariff language.

Second, the proposal is too narrow in specifying the timing of both the regulatory action and the retirement itself. Regulatory actions at a given point in time can trigger retirements that happen much later. All retirements that occur during the timeframe of future applications of NYISO’s formula should be counted, so long as the retirements are considered sufficiently linked to a prior regulatory action to be considered regulatory retirements.

²⁰ Proposed Section 23.4.5.13.5.3.

²¹ Compliance Filing at 8 (emphasis in original).

²² *Id.* at 9.

C. NYISO's Proposed Renewable Exemption Limit Formula Is Overly Stringent

Clean Energy Advocates believe that the “higher-of” methodology proposed by NYISO improperly limits applicability of the renewables exemption by using overly stringent price impact tests. NYISO proposes to conduct a two-part exercise to arrive at the cap for the renewable resource exemption. Part 1 computes a number for renewable exemptions that considers load growth, regulatory retirements and Unforced Capacity Reserve Margin changes due to new renewable resource entry, as well as any unused exemption from prior Class Years. Part 2 considers the price impact in which the capacity price drop is capped at \$0.50/kW per month. NYISO proposes to use the larger of the two computations to arrive at the renewable exemption cap.

Clean Energy Advocates recommend that NYISO should instead *add* the exemption number derived from Part 2 to the exemption number derived from Part 1 in arriving at an overall renewable exemption cap number. Under Part 1, in theory, if the cap is limited to the new “headroom” created (load growth, regulatory retirements and Unforced Capacity Reserve Margin growth), there will be *no* net capacity price impact. If the Part 1 number exceeds the Part 2 number, NYISO’s proposal will ignore the Part 2 effect, resulting in no capacity price impact. This approach is not consistent with FERC’s allowance for some *de minimis* impact in the Compliance Order. Adding the two numbers will allow exempt renewables to participate in the capacity market with minimal rate impacts. Also, as described in the next section, the impact threshold under Part 2 should be significantly increased.

D. The Proposed Price Impact Cap is Improperly Low

In the Compliance Filing, NYISO proposes a paltry \$0.50/kW per month value, the most stringent impact test in its tariff, as the price impact cap. Clean Energy Advocates recommend instead using \$2.00/kW per month as the threshold for the reasons stated below.

NYISO's proposed \$0.50/kW per month value is "the same value used in physical withholding thresholds under the NYISO's supplier-side capacity market power mitigation measures," but it is the *smallest* such mitigation threshold. For instance, Section 23.4.5.6.3 of the Services Tariff states that NYISO may assess penalties to generators that entered into IIFOs (Installed Capacity Ineligible Forced Outages) if doing so "would increase the Market-Clearing Price in one or more ICAP Spot Market Auctions for a Mitigated Capacity Zone by *five percent or more*, provided such increase is *at least* \$.50/kilowatt-month,"²³ so the threshold used in such cases may exceed \$0.50/kW per month. Moreover, Section 23.4.5.4.2 of the Services Tariff applies penalties to suppliers that sold their capacity externally in some cases if "the failure caused or contributed to an increase in UCAP prices in the Mitigated Capacity Zone of 15 percent or more, provided such increase is *at least* \$2.00/kilowatt-month."²⁴

In short, the Commission has already approved impact tests in NYISO's mitigation tariff sections that are well above the \$0.50/kw-month proposed in the Compliance Filing. Consistent with this precedent, the Commission should direct NYISO to replace its \$0.50/kW per month value with the \$2.00 per kilowatt-month value for assessing price impacts from the renewables exemption. This would strike a better balance between moderating effects on capacity prices and accommodating State policies, without resulting in price impacts beyond those that the Commission has already blessed in other contexts.

²³ See NYISO Market and Services Tariff, Att. H, at 23.4.5.6.3 (emphasis added).

²⁴ See *id.* at 23.4.5.4.2 (emphasis added).

Additionally, raising the impact threshold will send more appropriate economic signals to capacity market participants. Renewable generators add supply to the grid consistent with capacity needs and state policies, and over-mitigation of capacity can result in an electric system with excess supply. The correct economic signal in such a case is one that signals to potential investors in new capacity, or to investors contemplating retirement, that there is not a need for more capacity, nor for costly investments needed to retain aging uneconomic generation. In contrast, applying BSM to renewables risks resulting in an artificially boosted capacity price signal. This would lead to the uneconomic retention of excess capacity, especially of incumbent thermal units whose emissions New York State is trying to reduce. The result is uneconomic investment in retention of aging generation and unnecessarily costs to consumers who overpay for that excess capacity. To minimize these undesirable effects, a higher price impact threshold is justified, as this will allow renewable resources to enter the capacity market without sending inaccurate signals to existing generators.

E. The Renewables Exemption Should Include Banking for Future Class Years

Clean Energy Advocates anticipate that deployment of resources eligible for the renewables exemption may be somewhat “lumpy,” with some Class Years including many eligible resources and others including few or no such resources. Similarly, because NYISO’s approach accounts for unit retirements, as discussed above, the exemption quantity available year-to-year will vary significantly depending on planned retirements. Accordingly, Clean Energy Advocates support the year-to-year banking of any unused exemption quantities, as proposed by NYISO under the “Renewable Exemption Bank” concept.²⁵ This will properly

²⁵ Compliance Filing at pp. 10, 16-17; proposed tariff at 23.4.5.7.13.5.5.

identify any unused exemption amounts; that same quantity of capacity can be properly identified as available for renewables *without* substantial price impacts, and should be available for future Class Years.

III. CONCLUSION

The Clean Energy Advocates respectfully request that the Commission consider these comments and require appropriate refinements to NYISO's proposed BSM exemption for renewable resources.

Respectfully submitted,

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