

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

New York Independent System Operator, Inc.)

Docket No. ER19-467-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (the “Commission”) Rules of Practice and Procedure,¹ Independent Power Producers of New York, Inc. (“IPPNY”) hereby moves for leave to file this answer to the February 7, 2019, protest of the City of New York (“NYC”)² and the joint protest of the New York State Public Service Commission (“NYPSC”) and the New York State Energy Research and Development Authority (“NYSERDA”, collectively, the “State Entities”)³ in response to the New York Independent System Operator, Inc.’s (“NYISO”) proposed revisions to its Market Administration and Control Area Services Tariff (“Services Tariff”) and Open Access Transmission Tariff (“OATT”) (collectively, the “NYISO Tariffs”) to comply with FERC Order No. 841, filed on December 3, 2018, in the above-captioned docket.⁴ IPPNY also moves for leave to file this answer to the

¹ 18 C.F.R. §§ 385.212, 385.213 (2019).

² Docket No. ER19-467-000, *N.Y. Indep. Sys. Operator, Inc.*, Protest of the City of New York (Feb. 7, 2019) (“NYC Protest”).

³ Docket No. ER19-467-000, *supra*, Protest and Intervention of the New York State Public Service Commission and the New York State Energy Research and Development Authority (Feb. 7, 2019) (“February 7 Protest”).

⁴ Docket No. ER19-467-000, *supra*, Compliance Filing (Dec. 3, 2018) (the “December Filing”). The December Filing, which the NYISO filed in compliance with the Commission’s Order No. 841, proposed revisions to the NYISO Tariffs that consist of new and amended market rules to facilitate the participation of Energy Storage Resources (“ESRs”) in the NYISO-administered Energy, Ancillary Services, and Installed Capacity (“ICAP”) markets. *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018); Docket Nos. RM16-23-000 et al., Errata Notice (Feb. 28, 2018); 83 Fed. Reg. 9580 (Mar. 6, 2018) (“Order No. 841”). Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in the NYISO Tariffs. This pleading represents the

State Entities' motion for leave to answer and answer, filed on February 22, 2019, in the above-captioned docket.⁵

The NYISO's Buyer Side Market Power Mitigation Measures for ICAP (the "BSM Rules") apply to all new Generators in Mitigated Capacity Zones unless the Generator can demonstrate it meets the requirements to secure an exemption. In their February 7 Protest, the State Entities argued, among other things, that the Commission should reject the NYISO's proposal to treat ESRs in the same manner and apply the BSM Rules to all new ESRs.⁶ NYC made similar arguments in its Protest.⁷ In addition, the State Entities' February 22 Answer attempted to rebut IPPNY's comments, filed on February 7, 2019, which supported the NYISO's proposed tariff revision to clarify its tariff by reinstating a specific provision of its BSM Rules. As established by the NYISO, this revision is necessary to avoid any confusion that the BSM Rules apply to the entry in Mitigated Capacity Zones of all Generators that are 2 MW or less, including ESRs, unless otherwise exempt from such rules under the Services Tariff (the "BSM Rules Proposal").⁸

As discussed below, the Commission should reject NYC's and the State Entities' arguments in their protests and the February 22 Answer opposing the application of the BSM

position of IPPNY as an organization but not necessarily the views of any particular member with respect to any issue.

⁵ Docket No. ER19-467-000, *supra*, Motion for Leave to Answer and Answer of the New York State Public Service Commission and the New York State Energy Research and Development Authority (Feb. 22, 2019) (the "February 22 Answer").

⁶ February 7 Protest at 2.

⁷ NYC Protest at 9-15.

⁸ Docket No. ER19-467-000, *supra*, Comments of Independent Power Producers of New York, Inc. (Feb. 7, 2019) ("IPPNY Comments"); *see also* December Filing at 51-55 (establishing clarification is required to "ensure that Market Participants and investors have clear notice of the BSM Rules' applicability to, and possible impact on, an Energy Storage Resource in Mitigated Capacity Zones.").

Rules to ESRs.⁹ The NYISO's proposal to apply the BSM Rules to all ESRs is fully consistent with the Commission's orders directing the NYISO and other independent system operators and regional transmission organizations to implement rules that protect markets from artificial price suppression of ICAP prices resulting from subsidized, uneconomic new entry. Indeed, the Commission previously has rejected proposals to grant exemptions for small resources (*e.g.*, 20 MW or less). Nothing has changed since that determination that warrants reversal. In fact, the facts specific to ESRs demonstrate the need for these rules. And the State Entities have failed to demonstrate that ESRs fall within the category of resources that the Commission has determined should be exempt from the BSM Rules.

I. MOTION FOR LEAVE TO ANSWER

IPPNY requests leave to file this Answer because it will help to clarify the issues before the Commission, provide additional information that will assist the Commission, or will otherwise be helpful in the development of the record in this proceeding. Although Rule 213(a)(2) generally prohibits certain types of answers, including answers to protests and answers, the Commission has discretion to waive that prohibition for good cause shown. The basis for such waiver has included whether the answer leads to a more accurate and complete record, helps the Commission understand the issues, clarifies matters in dispute or errors, responds to new issues raised, or provides information that will assist the Commission in its decision-making

⁹ Other parties made arguments opposing the NYISO's proposed application of the BSM Rules to ESRs equal to or less than 2 MW. As those arguments are largely the same as the arguments made by the State Entities, for efficiency, IPPNY specifically addresses and cites to only the arguments raised in the State Entities' February 7 Protest and February 22 Answer. IPPNY anticipated and rebutted this point in its Comments and will not repeat those arguments here. IPPNY's silence with respect to other arguments that were made in the State Entities' February 7 Protest and the other protests and answers filed in this docket should not be construed as IPPNY's acquiescence to such arguments.

process.¹⁰ IPPNY's answer corrects misstatements, mischaracterizations and omissions in NYC's and the State Entities' pleadings regarding the NYISO's BSM Rules and associated Commission orders and points to dispositive rulings NYC and the State Entities failed to address and will, therefore, assist the Commission in reaching its decision. If the Commission grants the State Entities' motion requesting leave to file an answer,¹¹ it should similarly grant IPPNY's request to answer. Accordingly, the Commission should accept IPPNY's answer.

II. ANSWER

A. The NYISO's Proposed Application of the BSM Rules to All ESRs Is Just and Reasonable.

In pleadings that largely mirror each other, NYC and the State Entities argued that application of the BSM Measures to ESRs impedes market entry and participation by ESRs, interferes with state policy objectives and is, therefore, unjust, unreasonable and unduly discriminatory.¹² NYC and the State Entities also contended that ESRs lack the incentive and ability to artificially suppress ICAP prices.¹³ Therefore, NYC and the State Entities requested that the Commission reject the NYISO's December Filing and order the NYISO to exempt all ESRs from the BSM Rules. NYC and the State Entities proposed that, if the Commission does not direct such an exemption, it should either exempt all ESRs smaller than 20 MW or exempt all ESRs entering the market (irrespective of their individual size) up to an annual megawatt cap.¹⁴

¹⁰ See, e.g., *Mirant Energy Trading et al. v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007 at P 33 (2008); *BP West Coast Prods. LLC et al. v. SFPP, L.P. et al.*, 121 FERC ¶ 61,239 at P 34 (2007); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 at P 13 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co. et al.*, 105 FERC ¶ 61,053 at P 34 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 at P 18 (2003).

¹¹ February 22 Answer at 4.

¹² February 7 Protest at 12-13; NYC Protest at 9-10.

¹³ February 7 Protest at 13; NYC Protest at 9-10.

¹⁴ February 7 Protest at 25-26; NYC Protest at 12. The State Entities and other parties also argued that the NYISO failed to justify its proposal to reinstate a specific provision of its BSM Rules, which was previously approved by

Contrary to these claims, application of the BSM Rules to ESRs does not interfere with State policy goals. To the contrary, it is necessary to ensure that these programs are implemented in a manner that will effectively harmonize with the ongoing development of the wholesale markets. Subsidized, uneconomic ESRs, no matter the size, are an effective tool to artificially suppress ICAP prices and must be subject to mitigation under the BSM Rules like all other similarly situated resources.

1. Application of the BSM Rules to ESRs Does Not Interfere with State Policy Goals.

The State Entities asserted that New York laws obligate them to promote ESRs and direct the NYPSC to develop an energy storage deployment policy.¹⁵ The State Entities pointed to the NYPSC’s recently adopted statewide ESR deployment goal of up to 3,000 MW by 2030, with an interim deployment target of 1,500 MW by 2025.¹⁶ The State Entities argued that the NYISO’s proposal to subject ESRs to mitigation under the BSM Rules would interfere with these goals by making it more difficult for ESRs to participate in the wholesale market.¹⁷

the Commission, that would apply certain aspects of such rules to the entry in Mitigated Capacity Zones of new ESRs and other Generators that are 2 MW or less unless otherwise exempt from such rules under the Services Tariff. IPPNY anticipated this argument and demonstrated in its Comments that the current Services Tariff subjects all Generators, including ESRs 2 MW or smaller, to the BSM Rules unless specifically exempted. IPPNY Comments at 5-6. IPPNY further demonstrated that no such exemption exists for ESRs of any size. The Commission should reject the State Entities’ argument that the Commission’s earlier approval of this provision as just and reasonable “is irrelevant . . . because its judgment of tariff language evolves over time.” February 7 Protest at 31. As IPPNY explained, neither the NYISO’s BTM:NG Filing nor the Commission’s order accepting the BTM:NG Filing provided an exemption from the BSM Rules for resources 2 MW or smaller. IPPNY Comments at 5-6. To suggest that the Commission’s order accepting the BTM:NG Filing “reversed” its earlier decision accepting this provision is absurd.

¹⁵ February 7 Protest at 7.

¹⁶ *Id.* (citing Case 18-E-0130, *Energy Storage Goal and Deployment Policy*, Order Establishing Energy Storage Goal and Deployment Policy (Dec. 13, 2018) (“ESR Order”), available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FDE2C318-277F-4701-B7D6-C70FCE0C6266}>}).

¹⁷ *Id.* at 18–20.

The State Entities have failed to demonstrate that the BSM Rules are a barrier to the State’s ESR policies and goals. The BSM Rules impose no requirements whatsoever on the State with respect to policies promoting certain types of generating technology. With or without the BSM Rules, the State remains free to permit or not to permit new ESRs, or to choose some particular type of facility to further State policy objectives, including the reduction of greenhouse gas emissions. The sole effect of a fair, universal, and even-handed application of the BSM Rules is to ensure the price paid for ICAP remains just and reasonable once these resources enter the market—a matter undisputedly within the Commission’s exclusive jurisdiction.

The NYPSC has argued before that the BSM Rules interfere with State energy policies and therefore should not be adopted. In its protest of the NYISO’s proposed BSM Rules more than 10 years ago, the NYPSC argued that the Commission should reject the NYISO’s proposed BSM Rules for new ICAP supplies “on the basis that they could interfere with New York’s standards for resource adequacy and the ability to self-supply ICAP.”¹⁸ The NYPSC also argued that BSM Rules “undermine[] the public interest” by “prevent[ing] new resources, which are preferable from a public policy perspective (*e.g.*, increased fuel diversity or improved environmental characteristics), from . . . receiving ICAP payments when excess capacity causes clearing prices to fall below the minimum offer requirement.”¹⁹ After carefully considering this argument, the Commission rejected it as an attack on the NYISO’s BSM Rules as a whole:

Because uneconomic entry could produce unjust and unreasonable capacity prices by artificially depressing those prices, and NYISO’s proposal provides a reasonable means to deter uneconomic entry in the in-City market, we deny NYPSC’s request that the Commission reject the proposed minimum bid requirements for new capacity suppliers. Contrary to NYPSC’s claim, we find that granting its request would adversely impact

¹⁸ *N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at P 92 (2008).

¹⁹ *Id.*

matters within the Commission’s jurisdiction—in particular, the establishment of just and reasonable wholesale electric energy rates. Adoption of NYPSC’s proposal would lead to artificially depressed capacity prices, thus both causing existing generators to be undercompensated and also directly and adversely impacting the Commission’s ability to set just and reasonable rates for capacity sales in the in-City market. . . .

The NYISO’s offer floor proposal is an integral part of NYISO’s proposal, which the Commission is adopting, needed to “promote long-term reliability while neither over-compensating nor undercompensating generators.” The issue before us in this proceeding is not how to meet the resource adequacy requirements of New York State, but how prices for capacity in the wholesale markets should be determined in order to remedy identified flaws in the ICAP market. As we have found previously, issues of resource adequacy are important to the Commission in meeting our statutory mandate under the [FPA] to ensure that the rates, terms and conditions of jurisdictional transmission and sales of electric energy are just, reasonable, and not unduly discriminatory, or preferential.

Further, we find that our action in approving NYISO’s minimum bid proposal does not adversely affect NYPSC’s regulation of resource adequacy in NYC. This new pricing methodology does not prescribe whether or what types of generation facilities should be built, contrary to NYPSC’s concerns.²⁰

Despite this earlier rejection of the NYPSC’s same argument, the State Entities now ask the Commission to reverse its settled position and allow the State a means of distorting the competitive price levels in New York’s ICAP markets at will to achieve the State’s ESR goals. The Commission should reaffirm its determination in approving the BSM Rules and reject the State Entities’ argument. Under the BSM Rules, the State Entities retain the power to pursue whatever lawful initiatives they wish, so long as they, not the market, subsidize any uneconomic designs that may be chosen. If they choose to bear these costs themselves, without distorting

²⁰ *Id.* at PP 110–112.

prices under the Commission’s jurisdiction, they can do so. But they are not entitled to use subsidized entry to distort prices in the Commission’s jurisdictional markets.

2. Subsidized, Uneconomic ESRs, No Matter Their Size, Are an Effective Tool to Artificially Suppress ICAP Prices.

The State Entities argued that ESRs lack the incentive and ability to exercise market power to artificially suppress ICAP prices because they are unlikely to benefit from such suppression.²¹ They asserted that many ESRs entering the market are likely to be smaller than 20 MW and that, due to volatility in the amount of unsold ICAP in Mitigated Capacity Zones, it will be impossible to know whether a small ESR will be able to suppress ICAP prices.²² The State Entities asserted that “ESRs do not buy capacity, and thus do not have an incentive to pursue cost savings by suppressing capacity prices” because “lower prices degrade profitability.”²³

As a fundamental matter, these arguments disregard the purpose of the BSM Rules. The BSM Rules are designed to ensure that resources that are otherwise uneconomic *but for* their receipt of out-of-market compensation are not allowed to submit offers into the ICAP market that are below their going forward costs. To do so would artificially suppress ICAP prices for, and potentially cause the premature retirement of, resources that do not receive out-of-market compensation. Neither NYC nor the State Entities provide any evidence to rebut the fundamental design of these rules. In addition, their arguments are fundamentally flawed in several other critical respects.

²¹ February 7 Protest at 21.

²² *Id.* at 20-21.

²³ February 22 Answer at 6.

a. ESR Programs Provide the Opportunity to Suppress Prices.

The crucial flaw in the State Entities' argument is that it ignores the ability of a small, subsidized ESR to be combined with many other small ESRs that are subsidized with out-of-market compensation thereby artificially suppressing ICAP market prices materially. The issue is not the size of the individual resource but rather the aggregate impact of many individual subsidized resources. It is irrelevant whether the entry is the result of one subsidized 3,000 MW resource, 30 one-hundred MW resources or 3,000 one MW resources. The result is still 3,000 MW of subsidized uneconomic entry. As IPPNY established in its Comments, the Commission rejected the NYPSC's request in a complaint filed under Section 206 of the Federal Power Act against the NYISO, *inter alia*, to exempt Generators 20 MW or smaller from the BSM Rules for this very reason.²⁴ In that order, the Commission found "that the cumulative effect of several 20 MW units at a single station could have a significant impact on ICAP market prices."²⁵ Applying an exemption to ESRs smaller than 20 MW would contravene the Commission's order expressly rejecting this request.

As noted above, the NYPSC in its ESR Order set a goal of encouraging the deployment of 1,500 MW of energy storage by 2025 and 3,000 MW by 2030. To achieve these levels, it is important to note that the NYPSC, in part, ordered each of the state's investor owned utilities ("IOUs") to hold competitive procurements for ESRs to procure a minimum amount of storage to be operational by December 31, 2022.²⁶ The NYPSC required Consolidated Edison Company of New York, Inc. ("Con Edison"), the IOU that serves the Zone J Mitigated Capacity Zone, to

²⁴ *N.Y. Pub. Serv. Comm'n et al. v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at PP 78–79 (2015).

²⁵ *Id.* at P 79.

²⁶ ESR Order at 53.

procure dispatch and scheduling rights through contracts with at least 300 MW of ESRs located in its service territory and each of the other IOUs to procure such service from at least 10 MW each in their respective service territories.²⁷ The NYPSC directed that the bids shall not exceed a utility-specific defined ceiling but did not publish the ceiling due to the competitive nature of the solicitations.²⁸ Con Edison will recover its contract costs from all of its delivery customers through cost-of-service ratemaking, meaning such costs are non-bypassable and it will receive a return of and on such costs, net of the wholesale market revenues Con Edison earns from the NYISO markets by offering the ESRs' output into the NYISO's Energy, Ancillary Services and ICAP markets.²⁹

Importantly, the NYPSC required that the IOUs “request bids for contracts for up to seven years, during which the utility will have *full dispatch rights* to the assets” to procure a combination of the following: “(1) local reliability services; (2) local load relief; (3) local environmental benefits derived by reducing use of peaking units for contingency purposes; and, (4) wholesale services (*e.g.* capacity, spinning reserves, frequency regulation).”³⁰ As the IOUs will control the scheduling and dispatch of the ESRs, Con Edison has the same ability to exercise buyer-side market power whether it contracts with one 300 MW ESR, 30 ten MW ESRs or builds an entirely new generation facility. The impact of a total of 300 MW of uneconomic entry into NYC is substantial. It would reduce capacity clearing prices by 1.87/kW-month in Zones G-

²⁷ *Id.* at 55.

²⁸ *Id.* at 55 & n.49.

²⁹ Case 18-E-0130, *supra*, Implementation Plan of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. for a Competitive Direct Procurement of Scheduling and Dispatch Rights from Qualified Energy Storage Systems (Feb. 11, 2019) at 12-13, available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={516A0B55-DF3D-4807-8256-1DAACCFD6186}>.

³⁰ ESR Order at 54 (emphasis added).

J and 3.17/kW-month in Zone J based on the current Demand Curve levels.³¹ This calculation assumes that the entrants are ESRs capable of injecting power for only 4 hours per charge cycle. If they were able to inject power for 8 hours per charge cycle, they would qualify for a full capacity payment under the NYISO's proposed valuation for ESRs, and the result would be a reduction of 2.49/kW-month in Zones G-J and 4.23/kW-month in Zone J.³²

In addition, NYC and the State Entities conveniently omitted from their arguments in their protests that the NYPSC authorized a \$310 million "market acceleration bridge incentive" which is intended to "accelerate the cost decline curve by almost two years and save approximately \$200 million from the projected cost of deploying 1,500 MW of energy storage by 2025, and more than \$400 million from the projected cost of deploying 3,000 MW by 2030."³³ The NYPSC stated in its ESR Order that:

A bridge incentive is a proven approach, successfully applied in NY-Sun, that provides revenue certainty to the market for a defined duration and level of deployment. Such an approach provides that funding at levels of "missing money" to enable markets to work in the near term, and tapers this level of missing money predictably and transparently so as costs decline and values improve, to arrive at a point of cost reduction and economic

³¹ This was calculated using the same methodology employed by the State Entities. The Demand Curves are available at <https://www.nyiso.com/documents/20142/2953344/Demand-Curve2019-2020.pdf/fbe06a61-0578-d056-5c78-dfab5b9ae74b>. Based on the current Demand Curves, each 1 MW change in supply changes the price of capacity by \$0.0141/kW-month and \$0.0083/kW-month in Zone J and Zones G-J, respectively. The indicated impacts were estimated as follows: (a) for Zones G-J, $(\$0.0083/\text{kW month per MW}) \times (300 \text{ MW ESR}) \times (0.75 \text{ partial capacity value}) = \$1.87/\text{kW-month}$; (b) for Zone J, $(\$0.0141/\text{kW-month}) \times (300 \text{ MW ESR}) \times (0.75 \text{ partial capacity value}) = \$3.17/\text{kW-month}$.

³² The NYISO is currently reviewing rule changes with its Market Participants to value capacity resources with tariff revisions expected to be submitted to the Commission in the near term. The NYISO is proposing that capacity resources must be capable of providing service for eight hours to reliably operate the New York system. Zachary T. Smith, *Expanding Capacity Eligibility*, NYISO (Jan. 22, 2019), at 13, <https://www.nyiso.com/documents/20142/4582875/Expanding%20Capacity%20Eligibility.pdf/b5923eb9-aa87-ed0f-1b2f-7600c2e4016c> ("Smith Presentation").

³³ ESR Order at 65.

deployment where incentives are no longer needed or appropriate.³⁴

The NYSERDA program is expected to expend roughly \$350 million and bring approximately 500 MW of additional ESRs onto the system.³⁵ The NYPSC’s policy providing for seven-year contracts with IOUs and the “missing money” through its market acceleration bridge incentive for ESRs that cannot earn adequate revenues from the market is exactly the type of out-of-market subsidy that the BSM Rules are designed to mitigate.

Thus, the State Entities’ are incorrect to assert that small ESRs will have only a *de minimis* impact on ICAP prices in the Mitigated Capacity Zones.³⁶ Further, as indicated in the ESR Order, one of the NYPSC’s policies is to reduce the use of fossil peaking facilities by using ESRs. The NYPSC ordered its staff to perform a study which includes, among other things, a determination of “how many MWs of peaking units could be replaced or repowered economically with energy storage at varying durations without threatening reliability.”³⁷ As such, ESRs participating in the NYISO’s ICAP market are directly competing with fossil peaking facilities. It would be discriminatory, unjust and unreasonable to exempt ESRs from the BSM Rules while imposing such rules on fossil peaking facilities.³⁸

³⁴ *Id.* at 62.

³⁵ *Id.* at 66. NYSERDA obtained a filing extension so the parameters of its implementation plan are not yet known.

³⁶ February 22 Answer at 7.

³⁷ ESR Order at 90.

³⁸ That ESRs are like peaking facilities is demonstrated by a recent application filed with the NYPSC for a certificate to construct a 316 MW ESR project which is intended to replace 316 MW of fossil peaking plants on the same site. Case 19-E-0122, *Ravenswood Development, LLC*, Petition for an Order Granting a Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime (Feb. 21, 2019), available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1F6E91EA-70B8-4C7D-B1E7-6E286898DC71}>.

b. The Competitive Entry Exemption Provides ESRs With an Effective Mechanism to Obtain an Exemption Where Warranted.

NYC and the State Entities failed to recognize the significance of the ability of a new entrant to receive a competitive entry exemption (“CEE”) from the BSM Rules. Under the CEE, any new entrant that does not receive support for its project, directly or indirectly, from either a New York State governmental entity or a NYPSC-regulated transmission and distribution utility is exempt from application of the BSM Rules. As the CEE exempts all projects that do not have such support, and the BSM Rules exempt projects that pass the Mitigation Exemption Test (“MET”) and thus are economic, the obvious result of the State Entities’ requested exemption is to limit the NYISO’s ability to impose offer-floor mitigation on State- or utility-subsidized, uneconomic new entry of ESRs.³⁹ As explicitly recognized by the Commission in its order directing the NYISO to implement the CEE, however, this is exactly the type of new entry that should trigger the highest level of scrutiny to protect the market and market participants that rely on it against buyer-side market power whether intended or not.⁴⁰

c. Resources Receiving Out of Market Support Should Be Subject to Mitigation Regardless of Intent

The State Entities’ argument also disregards Commission rulings that “resources receiving out-of-market support are capable of suppressing market prices, regardless of intent.”⁴¹

³⁹ The State Entities argued that application of the BSM Rules to small ESRs would “entangle those resources in the Class Year Process” because ESRs would not be able to obtain their mitigation determinations and enter the market until the Class Year process is concluded. February 7 Protest at 24. As resources 2 MW or less are not subject to the Class Year process to obtain Capacity Resource Interconnection Service, IPPNY does not object to the NYISO Services tariff being revised to provide that projects 2 MW or smaller be eligible to receiving a CEE before the completion of the Class Year process. However, it would be discriminatory to completely exempt small ESRs from the BSM Rules because of potential delays in the Class Year process when all other similarly situated resources are subject to the BSM Rules and must wait for the completion of the Class Year process to obtain their MET determinations.

⁴⁰ *Consol. Edison Co. of N.Y., Inc. et al. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139, at PP 2, 64 (2015).

⁴¹ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236, at P 155 (2018) (citation omitted).

In its order last year determining that PJM's tariff is unjust and unreasonable and unduly discriminatory because its Minimum Offer Price Floor ("MOPR") is limited to new natural gas-fired resources, the Commission ruled that PJM's tariff:

fails to protect the integrity of competition in the wholesale capacity market against unreasonable price distortions and cost shifts caused by out-of-market support to keep existing uneconomic resources in operation, or to support the uneconomic entry of new resources, regardless of the generation type or quantity of the resources supported by such out-of-market support.⁴²

The Commission ruled that:

Price suppression stemming from state choices to support certain resources or resource types is indistinguishable from that triggered through the exercise of buyer-side market power. Under these circumstances, we no longer can assume that there is any substantive difference among the types of resources participating in PJM's capacity market with the benefit of out-of-market support.⁴³

In reaching its determination, the Commission pointed to the programs enacted in a number of PJM states that provide or require out-of-market support for thousands of megawatts of nuclear, solar, and wind resources and ruled mechanisms were required to address their impacts on the competitive markets.⁴⁴

- d. Past Commission Determinations Focused on the Nature of Intermittent Resources and their Associated Low Capacity Values, Not Low Capacity Factors.

Finally, as IPPNY anticipated in its Comments, the State Entities argued in their February 22 Answer that ESRs have lower capacity factors than the intermittent wind and solar resources

⁴² *Id.* at P 150.

⁴³ *Id.* at P 155.

⁴⁴ *Id.* at P 151-152. Review of the mechanisms to be implemented in the PJM market remains pending before the Commission at this time.

that the Commission determined should be exempt from the BSM Rules, up to a MW cap, in its order addressing the NYPSC complaint in 2015.⁴⁵ The State Entities implied that, because ESRs have low capacity factors, they should be similarly exempt from the BSM Rules. However, the State Entities have sought to extract one aspect of the Commission's holding to the exclusion of other relevant aspects. Specifically, the State Entities disregarded the crucial part of the Commission's order which provided that only *intermittent* resources with low capacity factors are eligible for the exemption.⁴⁶ The Commission determined that intermittent renewable resources with low capacity factors and high development costs have little or no incentive and ability to exercise buyer-side market power.⁴⁷ This is because an intermittent resource does not have the capability to reliably operate its facility to provide energy during peak periods when energy is most valuable.

The State Entities also mischaracterized the Commission's reference to low capacity factor in its NYPSC Complaint Order. The Commission's use of the term low capacity factor in that order referenced the NYPSC's complaint that intermittent resources have a low capacity contribution, *i.e.*, a low value in the capacity market relative to the MW size of the facility.⁴⁸ For example, a 100 MW, land-based wind facility would only be permitted to sell 20 MW of capacity.

⁴⁵ February 22 Answer at 9-10.

⁴⁶ *N.Y. Pub. Serv. Comm'n et al. v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at P 47 (2015) ("NYPSC Complaint Order").

⁴⁷ *Id.*

⁴⁸ *Id.* at P 40 (citing Docket No. EL15-64-000, *N.Y. Pub. Serv. Comm'n et al. v. N.Y. Indep. Sys. Operator, Inc.*, Complaint (May 8, 2015), at 19-20, 24-25 ("NYPSC Complaint"), Affidavit of Thomas S. Paynter at 18:1-5 (attached as Exhibit A to the NYPSC Complaint). The complaint stated that "renewable resources usually operate intermittently, resulting in a lower than average contribution to meeting capacity requirements, making it even more unlikely that a buyer could use such a resource to drive down the capacity market price sufficient to recover the substantial development costs." NYPSC Complaint at 25 (citing Affidavit of Thomas S. Paynter, at 19:1-5 (attached as Exhibit A to the NYPSC Complaint)).

It is the amount of capacity that the resource would qualify to offer that thus determines whether the resource can be used effectively to suppress prices. While intermittent resources generally have a low capacity value, ESRs are expected to have a relatively high capacity value. Under the NYISO's proposal, an ESR that can sustain injection for 4 hours would be able to have up to 75% of the capacity value of a resource without limitations in its duration of operations, and an ESR that can sustain injection for 8 hours would have up to 100% of the capacity value of a resource without limitations in its duration of operations.⁴⁹ For example, a 100 MW ESR with a 4-hour duration would be permitted to sell 75 MW of capacity (as compared to a 100 MW fossil-generator which would be able to sell 100 MW without taking derating into account), and a 100 MW ESR with an 8-hour duration would be permitted to sell 100 MW of capacity. An installed MW of ESR would clearly be expected to have a much bigger impact on suppressing capacity prices than an installed MW of intermittent generation.

Indeed, based on the State Entities' faulty reasoning, fossil peaking plants, which, like ESRs, have low capacity factors but high capacity values, should also be exempt from the BSM Rules. This is absurd. As discussed above and in IPPNY's Comments, ESRs are not intermittent resources like wind and solar resources with low capacity values as they are fully controllable and can be dispatched during peak periods.⁵⁰ ESRs as a resource type, like fossil peaking facilities, are thus capable of artificially suppressing ICAP prices regardless of their individual size and, therefore, must be subject to the BSM Rules.

⁴⁹ See Smith Presentation at 13.

⁵⁰ IPPNY Comments at 6.

Thus, for these reasons, the Commission should reject NYC's and the State Entities' alternative request to order the NYISO to exempt ESRs smaller than 20 MW or provide an exemption for ESRs entering the market up to an annual megawatt cap.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, IPPNY respectfully requests that the Commission grant its motion for leave to answer in the above-captioned proceeding, reject NYC's arguments in its Protest, reject the State Entities' arguments in both their February 7 Protest and February 22 Answer opposing the application of the BSM Rules to ESRs, and accept the NYISO's BSM Rules Proposal in its entirety.

Respectfully submitted,

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Dated: February 27, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

David B. Johnson
David B. Johnson

Dated: February 27, 2019