

155 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

New York Independent System
Operator, Inc.

Docket No. ER16-1213-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS
SUBJECT TO CONDITION

(Issued May 17, 2016)

1. On March 17, 2016, pursuant to section 205 of the Federal Power Act (FPA),¹ the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT) to provide rules for the participation of Behind-the-Meter Net Generation Resources (Behind-the-Meter Resources)² in NYISO's

¹ 16 U.S.C. § 824d (2012).

² NYISO proposes that a "Behind-the-Meter Net Generation Resource" be defined as "a facility within a defined electrical boundary comprised of a Generator and a Host Load located at a single point identifier (PTID), where the Generator routinely serves, and is assigned to, the Host Load and has excess generation capability after serving that Host Load. The Generator of the [Behind-the-Meter Generation] Resource must be electrically located in the [New York Control Area], have a minimum nameplate rating of 2 MW and a minimum net injection to the [New York State] Transmission or distribution system of 1 MW. The Host Load of the [Behind-the-Meter Generation] Resource must also have a minimum ACHL [Average Coincident Host Load] of 1 MW. A facility that otherwise meets these eligibility requirements, but either (i) is an Intermittent Power resource, (ii) whose Host Load consists only of Station Power, or (iii) has made an election pursuant to Section 5.12.1.12, does not qualify to be a [Behind-the-Meter] Resource. [Behind-the-Meter] Resources cannot simultaneously participate as a [Behind-the-Meter] Resource and in any ISO and/or Transmission Owner administered demand response or generation buy-back programs."

energy, ancillary services, and capacity markets. In this order, we accept certain of NYISO's proposed tariff revisions³ to become effective May 19, 2016, as requested, and the remaining proposed tariff revisions to become effective on or after October 1, 2016, as requested, subject to condition. We further direct NYISO to submit a compliance filing with no less than two weeks' notice of the actual effective date of the remaining tariff revisions.

I. Summary of NYISO's Filing

2. NYISO states that there are currently two generators participating in NYISO's wholesale markets that serve a behind-the-meter load.⁴ Both resources participated in the New York Power Pool's – NYISO's predecessor's – wholesale markets and were permitted to continue operation when NYISO was established. NYISO has not permitted additional behind-the-meter generators to participate in its markets.⁵

3. According to NYISO, while its current market rules do not expressly prohibit behind-the-meter generation from participating in its wholesale markets, its proposed eligibility requirements and market rules will provide additional clarity and an appropriate foundation for expanding NYISO's resource base.⁶ NYISO states that, under its proposed revisions, its currently-effective rules will apply to all Behind-the-Meter Resources, except where otherwise noted. In addition, NYISO states that it is proposing new rules to address the unique characteristics of Behind-the-Meter Resources and to provide flexibility for market participants.⁷ NYISO asserts that such flexibility includes allowing a resource to enroll with a single generator or an aggregation of generating units

³ OATT sections 25, 30, and 32 (Attachments X, S, and Z) and Services Tariff section 23.4.5.7.3 (and sections 23.4.5.7.3.2, 23.4.5.7.3.3, 23.4.5.7.3.4, and 23.4.5.7.3.5) and the corresponding change to the definition of NCZ Examined Facility in Services Tariff Section 23.2.1.

⁴ Capitalized terms not otherwise defined herein shall have the meaning specified in section 1 of the OATT and section 2 of the Services Tariff.

⁵ NYISO Filing at n.5. NYISO states that upon the effective date of the revisions proposed herein, it will work with the two existing resources to transition them to become Behind-the-Meter Resources or another type of resource as appropriate.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

servicing a host load⁸ or, where appropriate metering and other facility configuration exists, with a single facility split into several distinct Behind-the-Meter Resources.

4. NYISO proposes the following minimum eligibility requirements for resources seeking to participate as a Behind-the-Meter Resource: a resource must have (1) nameplate generation capability with a minimum rating of at least two MW; (2) a minimum load of at least one MW; and (3) an interconnection allowing an export of at least one MW to the New York State transmission system. NYISO contends that there may be behind-the-meter generators in New York that wish to sell energy, capacity, or ancillary services in the wholesale markets that do not meet these minimum eligibility requirements but that it intends to develop additional software, rules, and procedures to further integrate distributed generation in the wholesale markets and to align NYISO's wholesale markets with the New York State Public Service Commission's (NYPSC) Reforming the Energy Vision proceeding.⁹

5. NYISO states that, to fully integrate Behind-the-Meter Resources into the Installed Capacity (ICAP) market, it proposes new calculations to determine a Behind-the-Meter Resource's available ICAP and its Unforced Capacity. NYISO contends that both calculations will determine "net" values whereby the resource's gross generation is reduced by NYISO's calculation of its adjusted host load before determining the capacity available to the market.¹⁰ NYISO also states that it proposes to apply all of the existing market power mitigation measures to Behind-the-Meter Resources, but certain minor clarifications are needed in order to facilitate that application.¹¹

⁸ "Host Load" is proposed to be defined as "[t]he Load that is electrically interconnected within the defined electrical boundary of a [Behind-the-Meter] Resource that is routinely served by, and assigned to, the Generator of a [Behind-the-Meter] Resource. Station Power will be included in the calculation of the [Behind-the-Meter] Resource's Host Load if it is self-supplied by the Generator of the [Behind-the-Meter] Resource, and it is not separately metered pursuant to Section 5.12.6.1.1 and ISO Procedures."

⁹ *Id.* at 3 (citing Case 14-M-0101 – Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Developing the REV Market in New York: DPS Staff Straw Proposal on Track One Issues (Aug. 22, 2014)).

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 4.

6. NYISO states that a key element of its proposal involves revisions to section 5.12.1 of the Services Tariff and related revisions to OATT Attachment S. NYISO states that, to guard against the possibility that Behind-the-Meter Resources would not be subject to NYISO's interconnection procedures, including the NYISO Deliverability Interconnection Standard¹² (e.g., because they are connected to or proposing to connect to non-jurisdictional distribution facilities), it proposes a new eligibility requirement for resources seeking to qualify as an ICAP Supplier (i.e., ICAP eligibility requirement). NYISO asserts this requirement will ensure that such resources are subject to the deliverability requirements that apply to similar resources over two MW regardless of their point of interconnection.¹³

7. NYISO further states that, in fairness to existing resources that have already made investment decisions and to avoid the application of such a standard retroactively, it proposes that this new ICAP eligibility requirement apply only on a prospective basis. NYISO states that, as with the introduction of the NYISO Deliverability Interconnection Standard, it proposes a transition rule (described in proposed sections 25.9.3.3 and 25.9.3.4.1 of the OATT) that would apply to certain existing resources that would otherwise be subject to this new ICAP eligibility requirement. According to NYISO, under the proposed transition rule, certain existing resources, including Behind-the-Meter Resources that connect to non-jurisdictional distribution facilities and large and small generating facilities that pre-dated Class Year 2007, may obtain Capacity Resource Interconnection Service (CRIS)¹⁴ during a limited window of time without having to

¹² NYISO proposes to define "NYISO Deliverability Interconnection Standard" as the standard that must be met, unless otherwise provided for by Attachment S, by (i) any generation facility larger than 2 MW in order for that facility to obtain CRIS; (ii) any Merchant Transmission Facility proposing to interconnect to the New York State Transmission System or to the Distribution System and receive Unforced Capacity Deliverability Rights; (iii) any entity requesting External CRIS Rights; and (iv) any entity requesting a CRIS transfer pursuant to section 25.9.5 of Attachment S. To meet the NYISO Deliverability Interconnection Standard, the Developer must, in accordance with these rules, fund or commit to fund any System Deliverability Upgrades identified for its project in the Class Year Deliverability Study. *See* proposed section 25.1.2 of Attachment S to the OATT.

¹³ *Id.* at 4.

¹⁴ NYISO proposes to define "Capacity Resource Interconnection Service" as the service provided by NYISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are otherwise eligible to receive CRIS in accordance

(continued...)

enter a Class Year Study and satisfy the requirements under the NYISO Deliverability Interconnection Standard set forth in OATT Attachment S. NYISO states that, after the close of the transition period, Behind-the-Meter Resources and any other generator or controllable transmission project over two MW electrically located in the New York Control Area (regardless of whether the point of interconnection is a jurisdictional facility) must obtain CRIS through the Class Year process or through a transfer of CRIS at the same location in order to participate as an ICAP supplier.¹⁵

8. In addition, NYISO proposes several miscellaneous revisions to capture changes to the Services Tariff that it says do not exclusively relate to Behind-the-Meter Resource participation in the energy, ancillary services, or capacity markets or to the mitigation measures, but apply more generally to market participants. NYISO states that these revisions eliminate antiquated language and add clarity to the Services Tariff.¹⁶

9. NYISO requests an effective date of May 19, 2016 for the proposed revisions to OATT sections 25, 30, and 32 (Attachments X, S, and Z) to promptly begin CRIS evaluation and interconnection process. NYISO explains that if the Commission were to grant this requested effective date, the 60-day period for the proposed transition rule would expire before the potential start date for the next Class Year Study (September 2016). NYISO contends that the requested effective date (1) would provide certainty to market participants as to the rules to which they will be subject, (2) will allow NYISO to reflect CRIS awarded under the transition rule in the base case for its next Class Year Study, and (3) will allow potential Behind-the-Meter Resources that are not subject to the transition rule to enter the upcoming Class Year.¹⁷

10. NYISO also requests a proposed effective date of May 19, 2016 for those revisions to its Services Tariff that are unrelated to Behind-the-Meter Resource participation, including section 23.4.5.7.3 (and sections 23.4.5.7.3.2, 23.4.5.7.3.3, 23.4.5.7.3.4, and 23.4.5.7.3.5) and the corresponding change to the definition of NCZ Examined Facility in Services Tariff section 23.2.1. NYISO explains that, given its

with Attachment S; such service being one of the eligibility requirements for participation as a NYISO ICAP Supplier. *See* proposed section 25.1.2 of Attachment S to the OATT.

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 61.

¹⁷ *Id.*

on-going application of the buyer-side market power mitigation rules, a date certain for the effective date will avoid any risk of confusion about the specific tariff language.¹⁸

11. For all of the other tariff revisions (Remaining Tariff Revisions), NYISO requests a flexible effective date no earlier than October 1, 2016. NYISO currently anticipates such revisions becoming effective on or before October 15, 2016. NYISO states that it will be unable to provide a precise effective date until the software changes necessary to allow participation of Behind-the-Meter Resources is tested and ready for deployment. NYISO proposes to submit a compliance filing at least two weeks prior to the proposed effective date that will specify the requested effective date. NYISO states that, consistent with Commission precedent, the compliance filing will provide adequate notice to the Commission and market participants of the Remaining Tariff Revisions.¹⁹

II. Notice of Filing and Responsive Pleadings

12. Notice of NYISO's filing was published in the *Federal Register*, 81 Fed. Reg. 25,663 (2016), with interventions and protests due on or before April 7, 2016. New York Association of Public Power, Entergy Nuclear Power Marketing, LLC, and New York Transmission Owners²⁰ filed motions to intervene.

13. The NYPSC filed a notice of intervention and comments. Energy Spectrum, Inc. (Energy Spectrum), Cubit Power One, Inc. (Cubit), ReEnergy Holdings LLC, (ReEnergy), and Multiple Intervenors²¹ filed motions to intervene and comments.

¹⁸ *Id.*

¹⁹ NYISO Filing at 61 (citing *New York Indep. Sys. Operator, Inc.*, 106 FERC ¶ 61,111, at P 10 (2004); *New York Indep. Sys. Operator, Inc.*, Docket No. ER11-2544-000, at 1 (Feb. 10 2011) (letter order); *New York Indep. Sys. Operator, Inc.*, Docket No. ER15-485-000, at 2 (Jan. 15, 2015) (letter order); *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,057, at P 20 (2015)).

²⁰ For purposes of this proceeding, New York Transmission Owners consist of Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Power Supply Long Island; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

²¹ Multiple Intervenors state that they are an unincorporated association of over 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

NY DG Holdings LLC (NY DG) and Independent Power Producers of New York, Inc. (IPPNY) filed motions to intervene and limited protests.

14. On April 21, 2016, Cubit filed an answer to IPPNY's limited protest, and on April 22, 2016, NYISO filed an answer to the comments and protests filed by IPPNY, NY DG, and ReEnergy.

A. Comments, Protests, and Answers

15. Cubit, ReEnergy, Energy Spectrum, and Multiple Intervenors support NYISO's proposed tariff revisions.²² Energy Spectrum states that, during periods of peak load, excess capacity from an on-site generator can supplement traditional sources of energy and enhance system reliability. Multiple Intervenors state that Behind-the-Meter Resources have excess capacity that can and should be used to support the grid and to avoid unnecessary infrastructure investments. Multiple Intervenors assert that some of these facilities are located in areas like New York City, where reliability could be bolstered if additional generation is made available to the grid.²³

16. While NYPSC also states that it generally supports NYISO's proposal, it protests NYISO's application of its market power mitigation rules to Behind-the-Meter Resources, as discussed below. Similarly, IPPNY states that it supports NYISO's proposal to open its markets to Behind-the-Meter Resources and, wherever possible, to hold these resources to the same requirements as traditional generators; however, it protests the proposed transition period.

1. Market Power Mitigation

17. The NYPSC protests NYISO's proposal to apply its market power mitigation rules to Behind-the-Meter Resources because mitigation is unnecessary absent evidence of a threat of an exercise of market power. The NYPSC contends that distributed generation is still underdeveloped, small in size, and a resource that should be promoted rather than mitigated.²⁴

²² Cubit Comments at 12; ReEnergy Comments at 2; Energy Spectrum Comments at 4, 6; Multiple Intervenors Comments at 8.

²³ Multiple Intervenors Comments at 1-2.

²⁴ NYPSC Comments at 5-6.

2. Transition Rule

18. Cubit supports the proposed transition rule,²⁵ stating that it is consistent with Commission precedent. Cubit asserts that the transition rule is analogous to the grandfathering granted by the Commission following the issuance of Order No. 2003.²⁶ Cubit states that to implement the deliverability requirements of Order No. 2003, NYISO and the New York Transmission Owners filed a deliverability plan with the Commission on October 5, 2007, which, among other things, proposed to grandfather projects prior to Class Year 2007 from the then-proposed CRIS requirements. Cubit states that, when the Commission accepted NYISO's grandfathering rules, the Commission explicitly acknowledged that it should protect the settled expectations of developers who already made economic commitments to develop projects relying on existing tariffs and that those developers should not be subject to additional requirements and costs retroactively.²⁷ Cubit asserts that the proposed transition rule achieves the same balance as was found in the subsequent deliverability plan filed by NYISO and the New York Transmission Owners' in compliance with the Guidance Order, i.e., the proposed transition rule would apply only to limited and narrowly defined projects, including those projects that complete all necessary interconnection studies and execute an interconnection agreement with the interconnecting utility.²⁸ Multiple Intervenors add that, in the Guidance Order, the Commission expressly rejected requests by some market participants to require then-existing generators to be tested for deliverability when it approved the 2007 deliverability plan.²⁹

²⁵ Cubit Comments at 12.

²⁶ *Id.* at 7 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008)).

²⁷ *Id.* at 8-9 (citing *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,267, at P 65 (2008) (Guidance Order)).

²⁸ *Id.* (citing *New York Independent System Operator, Inc.* 126 FERC ¶ 61,046, at P 115 (2009)).

²⁹ Multiple Intervenors Comments at 6 (citing Guidance Order, 122 FERC ¶ 61,267 at PP 63, 65).

19. On the other hand, IPPNY challenges NYISO's proposed transition rule.³⁰ IPPNY states that neither the amount nor the location of the capacity to which the transition period would apply has been identified. However, given the results of NYISO's recent capacity zone studies, IPPNY asserts that allowing resources that have not shown that they are deliverable to sell capacity in the NYISO markets could threaten the reliability of the NYISO system because their capacity may not be deliverable to loads in their respective sub-zones. Moreover, IPPNY argues that NYISO's proposed transition rule would unfairly diminish the value of resources that have demonstrated their deliverability and, in some cases, have incurred significant costs to obtain their CRIS rights.³¹

20. Additionally, IPPNY argues that the Commission should reject NYISO's proposed transition rule because it is premised on NYISO's flawed interpretation of its tariff. According to IPPNY, NYISO's tariff is already clear that all ICAP suppliers must obtain CRIS for the amount of MWs they wish to sell from their facilities into the ICAP market by satisfying the NYISO Deliverability Interconnection Standard before they may make such sales.³²

21. IPPNY argues that NYISO's attempt to draw an analogy to the grandfathering rule is inapt. IPPNY contends that the grandfathered resources are permitted to hold their CRIS rights only if they do not have a continuous period of three years where they do not offer ICAP to the NYISO market or participate in bilateral transactions. IPPNY contends that assuming, arguendo, that the grandfathering rule could be read to extend to non-jurisdictional interconnections, to the extent any of these resources interconnected prior to the 2007 Class Year, they are no longer able to apply the grandfathering rule because their rights to obtain and maintain CRIS terminated when they did not offer ICAP or participate in bilateral transactions for their excess generation capability after servicing host load for three or more years.

³⁰ IPPNY Protest at 2-3.

³¹ *Id.* at 5. For example, IPPNY states that the CPV Valley project was required to fund \$14 million in System Deliverability Upgrades to be found deliverable. *Id.* (citing *Class Year 2011 Facilities Studies System Deliverability Study: Third Round Addendum*, NYISO (Sept. 24, 2013), at 3).

³² *Id.* at 6 (citing NYISO Services Tariff § 5.12.8; NYISO OATT, Attachment S § 25.7.4).

22. IPPNY also disagrees with NYISO's assertion that the proposed transition rule treats Behind-the-Meter Resources comparably to pre-2007 Class Year facilities with respect to CRIS rights. IPPNY contends that the two classes of resources are not comparable given that the facilities that were operating prior to the 2007 Class Year and that were grandfathered had already been selling ICAP on the bulk system for many years. IPPNY states that, moreover, when NYISO initially proposed its NYISO Deliverability Interconnection Standard, it performed an extensive analysis that showed that the system was fully deliverable with the existing resources. In contrast, IPPNY states, the resources to which the transition rule would apply do not currently have CRIS rights, were not included in NYISO's 2006 deliverability study, and have never otherwise been studied for deliverability. According to IPPNY, they also have never been modeled as part of the system in the deliverability studies that have been applied to units seeking CRIS rights since 2007.³³

23. IPPNY requests that the Commission direct NYISO to perform a transition-targeted deliverability study to allow the resources in question to demonstrate whether they are deliverable. IPPNY proposes that NYISO could perform a Behind-the-Meter Resource transition Class Year Study in which the existing Behind-the-Meter Resources would be tested against the assumptions from the final Class Year 2015 studies to determine whether they cause a deliverability problem. IPPNY states that any Behind-the-Meter Resource that is demonstrated to be deliverable would be granted CRIS rights and allowed to sell ICAP and those that are deemed to not be deliverable would be required to enter a future Class Year study.

24. In its answer, NYISO contends that IPPNY's claim that "NYISO's proposed transition rule would unfairly diminish the value of resources that have demonstrated their deliverability" is unsupported, arguing that the purpose of the proposed transition rule is to provide comparable treatment between Behind-the-Meter Resources and traditional generators. NYISO explains that, when it proposed the currently-effective provisions in section 25.9.3.1 of Attachment S to the OATT, Retaining CRIS Status, it proposed that the new deliverability requirement be applied to projects in Class Year 2007 and thereafter.³⁴ NYISO states that its proposal included the grandfathering rule because of concerns about applying a new standard to facilities retroactively.³⁵ NYISO clarifies that, under the grandfathering rule, existing generators were given CRIS based on the demonstrated maximum capability over a five year period, regardless of

³³ *Id.* at 8.

³⁴ NYISO Answer at 3.

³⁵ *Id.* at 3-4.

whether that capacity was deliverable. NYISO states that the original set of generators subject to the grandfathering rule were neither determined to be deliverable nor actually deliverable under the NYISO Deliverability Interconnection Standard that the Commission ultimately accepted.³⁶

25. NYISO explains that the proposed transition period is narrow in scope, allowing Behind-the-Meter Resources only a 60-day window to request CRIS and only if they meet certain specific requirements. NYISO points out that this is far more stringent than the grandfathering rule, which set no deadline to request CRIS.³⁷ NYISO contends that the transition rule is intended to provide a fair transition mechanism to existing resources that did not know when they were built that NYISO would propose this new deliverability requirement for all generators seeking to become ICAP suppliers.³⁸ NYISO finds IPPNY's assertion that Behind-the-Meter Resources should pay for System Deliverability Upgrades if they are found to be undeliverable is inappropriate, impractical, and contrary to the treatment afforded to the original set of grandfathered generators.³⁹

26. In its answer, Cubit contends that IPPNY's assertion that the transition rule could shift significant and unanticipated costs to new developers is unfounded. Cubit argues that costs accruing to participants in the following year's Class Year Study would not be unanticipated, as the universe of projects grandfathered under the transition rule will already have been established. Cubit states that, to the extent that those interconnections will create additional costs to upgrade the system, those costs will be partially, if not

³⁶ *Id.* at 4-5.

³⁷ *Id.* at 5. NYISO states that IPPNY's argument that if subject to the grandfathering rule, a facility has lost its CRIS if it has not participated in the market for three years ignores the plain language of the tariff. NYISO explains that the grandfathering provisions in section 25.9.3 did not require all pre-Class Year 2007 generators to come forward immediately to request CRIS if entitled to obtain CRIS under the grandfathering provisions. Moreover, NYISO explains further that the three-year "deactivation rule" included in section 25.9.3.3, providing that a facility's CRIS terminates after it is "CRIS-inactive" for three years, only applies once a generator has obtained CRIS.

³⁸ *Id.* at 5.

³⁹ *Id.*

fully, mitigated by the payments the projects must make to the interconnecting utilities to ensure they can safely interconnect to the system.⁴⁰

27. Cubit also asserts that IPPNY's reference to requirements imposed on pre-Class Year 2007 grandfathered projects to retain their CRIS rights after the fact is irrelevant to whether the transition rule is appropriate. Cubit states that, while the 2007 grandfathering rule imposes additional limitations on grandfathered projects going forward, the grandfathering itself already has occurred. Cubit states that, for the purposes of creating a transition rule to grandfather projects that are not currently subject to NYISO interconnection procedures, the existence of this post-grandfathering limitation has no bearing on whether a generator should be grandfathered initially under the transition rule.⁴¹

28. Contrary to IPPNY, Cubit also contends that the 2007 grandfathering rule was not applicable only to projects in service as of the date of the rule. Rather, Cubit contends, the 2007 grandfathering rule provided mechanisms for granting CRIS rights to projects that had not yet begun selling ICAP in the NYISO market.⁴²

29. NYISO asserts that IPPNY incorrectly argues that NYISO's existing tariff already requires non-jurisdictional facilities to satisfy the NYISO Deliverability Interconnection Standard. NYISO asserts that, currently, the only way to subject facilities to the NYISO Deliverability Interconnection Standard is through NYISO's interconnection process, which applies only to large facilities and to certain small facilities (both of which are connecting to jurisdictional transmission or distribution, per Order Nos. 2003 and 2006).⁴³ Further, NYISO argues that IPPNY misinterprets the

⁴⁰ Cubit Answer at 9-10.

⁴¹ *Id.* at 6-7.

⁴² *Id.* at 7-8.

⁴³ NYISO Answer at 6 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, at P7 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 at PP 481 and 487 (2005)).

language of section 5 of the Market Administration and Control Area Services Tariff (MST) to mean that all generators must have obtained CRIS to become ICAP suppliers. NYISO explains that MST section 5.12.1 only requires that they comply with the applicable deliverability standards (of which there are none for non-jurisdictional facilities).⁴⁴

30. NYISO asserts that IPPNY's argument that the proposed transition rule may adversely affect reliability is unsupported. NYISO explains that a capacity resource deemed "fully deliverable" or having a certain MW level of CRIS rights does not give the facility an absolute ability to inject that MW level; rather, it permits the unit to participate in the NYISO's ICAP market. NYISO also contends that a limitation on the "deliverability" of the transmission system does not necessarily imply that reliability is jeopardized and that the bulk power system cannot be operated within reliability criteria even if some generation cannot be delivered to some segment of load.⁴⁵ According to Cubit, under the proposed transition rule, projects are required to have completed all required interconnection studies and have an effective interconnection agreement by the effective date of the proposed tariff revisions in order to obtain CRIS rights. Cubit states that those interconnection studies will already have been performed by the interconnecting utility to ensure that the new generation can safely interconnect to the electric system without compromising or otherwise degrading system reliability.

31. NY DG states that it does not oppose NYISO's proposal but opposes the proposed effective date of May 19, 2016 for the transition period, arguing that all provisions should go into effect on the same day as the October 2016 flexible effective date. NY DG argues that, by requiring an October 2016 effective date, generators may have until October 2016 to meet the transition rules, and if they do not, they may prepare to enter the next open Class Year. NY DG asserts that, because these resources may not be aware of the change, they would only have three days from the May 16, 2016 requested issuance date for the order to the May 19, 2016 effective date in order to meet the transition rule. NY DG asserts that an October 2016 effective date for the entire proposal would also allow NYISO to get its forms, rules, and procedures in place to process these requests in an efficient manner and to allow generators to understand the implications and rules for participating in a Class Year process.⁴⁶

⁴⁴ *Id.* at 6-7 (citing MST § 5.12.1).

⁴⁵ *Id.* at 7 (citing New York Independent System Operator, Inc., Compliance Filing and Request for Further Extension of Time, Docket No. ER04-449-005 at 5 (Feb. 7, 2005)).

⁴⁶ NY DG Protest at 4-5.

32. In response, NYISO states that its proposal provides 60 days, not three days, within which to exercise these rights.⁴⁷ NYISO also contends that NY DG appears to misunderstand the Class Year entry requirements. NYISO explains that Behind-the-Meter Resources do not need to meet a regulatory milestone or have an Operating Committee-approved System Reliability Impact Study to enter a Class Year Deliverability Study unless they are subject to the NYISO's interconnection procedures and required to enter a Class Year Study. NYISO explains that those requirements only apply to facilities that are subject to the full Class Year Study. NYISO clarifies that a facility entering a Class Year Study solely for the purpose of requesting CRIS is subject only to an executed study agreement and a \$50,000 deposit.⁴⁸ NYISO asserts that it is unclear how these requirements would be so complicated that Behind-the-Meter Resources would require additional time to understand the requirements of participating in a Class Year Deliverability Study.

3. Effective Date for Remaining Tariff Provisions

33. ReEnergy requests that the Commission order the Remaining Tariff Revisions to be effective no later than October 15, 2016.⁴⁹ ReEnergy argues that the lack of a firm effective date continues the uncertainty for Behind-the-Meter Resources, asserting that the effective date could be even further delayed.

34. In its answer, NYISO asserts that ReEnergy's request for a firm effective date is inconsistent with NYISO's experience with deploying major software upgrades. NYISO explains that implementation of the Remaining Tariff Revisions requires significant changes to numerous software applications, including testing and processes NYISO utilizes. NYISO explains that the exact date of that software deployment cannot be finalized at this time, but it still expects to integrate Behind-the-Meter Resources in a software release in October 2016.⁵⁰ NYISO contends that the lack of a firm effective date should not aggravate or prolong uncertainty because it has been informing stakeholders of the expected implementation timeline over several stakeholder meetings. NYISO asserts that the Commission has granted flexible effective dates in similar

⁴⁷ NYISO Answer at 7-8 (citing Proposed OATT § 25.9.3.3 and 25.9.3.4.1).

⁴⁸ *Id.* (citing Proposed OATT § 30.8.1).

⁴⁹ ReEnergy Comments at 4.

⁵⁰ NYISO Answer at 8-9.

circumstances when the proposed tariff revisions required further development or coordination after filing.⁵¹

III. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

36. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Cubit's and NYISO's answers because they have provided information that has assisted us in our decision-making process.

B. Commission Determination

37. The Commission accepts this filing subject to condition, as discussed below.⁵² Specifically, the Commission accepts subject to condition certain of NYISO's proposed revisions to its OATT and Services Tariff,⁵³ to become effective May 19, 2016, and the Remaining Tariff Revisions, to become effective on or after October 1, 2016, subject to the condition that NYISO submit a compliance filing with no less than two weeks' notice of the actual effective date.

⁵¹ *Id.* at 10-11 (citing *New York Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,097, at P 34 (2014); *New York Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,158, at 1 (2015); *New York Indep. Sys. Operator, Inc.*, Docket No. ER15-485-000, at 2 (Jan. 15, 2015) (unpublished letter order).

⁵² The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). A utility is free to indicate that it is unwilling to accede to the Commission's conditions in this order by withdrawing its filing.

⁵³ *See supra* Note 3.

38. We recognize the potential benefits of reducing obstacles to using excess capacity of Behind-the-Meter Resources to support New York's grid.⁵⁴ NYISO's proposal advances this goal, as Behind-the-Meter Resources that meet NYISO's eligibility requirements will be permitted to bid energy and capacity in a comparable way to other suppliers and receive payments if they are dispatched. Their participation should improve the competitiveness, efficiency, and reliability of those markets.

39. NYPSC asserts that the mitigation of Behind-the-Meter Resources is unnecessary. NYPSC, however, has not provided any support for its assertion. Therefore, we dismiss NYPSC's comment on this issue.

40. We also accept NYISO's proposed transition rule. NYISO's proposed transition rule closes a loophole identified by NYISO. Currently, generators that are connected to non-jurisdictional facilities are not required to satisfy the NYISO Deliverability Interconnection Standard in order to obtain CRIS and sell capacity into the NYISO markets. The instant proposal closes that loophole but also provides a limited window of time for existing resources that have already made their investment decisions based upon NYISO's existing tariff to obtain CRIS without having to enter a Class Year Study and satisfy the deliverability requirements proposed herein in order to continue to sell capacity into the NYISO market. We find that the proposed limited 60-day transition period is narrow in scope and reasonable given the substantial investment decisions developers have made based on the existing tariff rules and likely harm they would face without such transition period.

41. We find that the concerns raised by IPPNY regarding reliability are unsupported. As stated above, the resources that will be grandfathered under the proposed transition rule are not currently required to satisfy the requirements of the NYISO Deliverability Interconnection Standard in order to sell capacity into the NYISO market. Also, reliability concerns will be reasonably mitigated by the limited duration of the transition period and the requirement that any grandfathered projects must have completed all required interconnection studies and have an effective interconnection agreement by May 19, 2016 in order to obtain CRIS. The transition rule is also consistent with the manner in which existing generators were grandfathered when the NYISO Deliverability Interconnection Standard was first implemented, as those existing generators were not required to be tested for deliverability.⁵⁵ For these reasons, we accept the transition rule.

⁵⁴ Multiple Intervenors Comments at 1-2.

⁵⁵ Guidance Order, 122 FERC ¶ 61,267 at PP 52, 63, 65.

42. We find that NYISO's proposed length of the transition period is reasonable. Under NYISO's proposal, the transition period would begin May 19, 2016 and continue for 60 days thereafter. Parties, therefore, would have 60 days to exercise rights in order to comply with the transition rule and obtain CRIS rights, as opposed to three days, as NY DG contends. Further, as NYISO explains, ending the transition period within 60 days is necessary to allow NYISO to reflect CRIS awarded under the transition period in the base case for its next Class Year Study and potential Behind-the-Meter resources that are not subject to the transition rule to enter the upcoming Class Year Deliverability Study. In light of the foregoing, we find that NYISO's proposed 60-day transition period is reasonable.

43. Regarding the effective date of the Remaining Tariff Revisions, NYISO states that it is currently unable to provide such a date and has agreed to submit a compliance filing at least two weeks prior to the proposed effective date that will specify the date on which the provisions will take effect. However, to provide greater certainty to market participants as to when implementation will begin, we require that, in the event NYISO is unable to implement the Remaining Tariff Revisions during the fourth quarter of 2016, NYISO file with the Commission by December 1, 2016 a status report on its software development, including the reason for the delay in implementation, and the new expected implementation date.⁵⁶ In the meantime, we expect that NYISO will continue to keep market participants informed of its progress towards implementation through its stakeholder processes. Accordingly, we accept NYISO's Remaining Tariff Revisions, to become effective on or after October 1, 2016, subject to the condition that NYISO submit a compliance filing with no less than two weeks' notice of the actual effective date.⁵⁷

The Commission orders:

(A) NYISO's proposed tariff revisions are hereby accepted, subject to condition, to become effective as discussed in the body of this order. NYISO is hereby directed to submit a compliance filing with at least two weeks' notice of the actual effective date of the Remaining Tariff Revisions, as discussed in the body of this order.

⁵⁶ The report will be for informational purposes and will not be noticed for comment or subject to Commission order.

⁵⁷ We find good cause to grant NYISO's request for waiver of the prior notice requirements of section 35.3 of the Commission's Rules and Regulations, 18 C.F.R. § 35.3, to permit the filing to be made more than 120 days in advance of the proposed effective date because this will allow NYISO additional time to develop the software changes necessary to implement its proposed revisions.

(B) If NYISO is unable to implement the Remaining Tariff Revisions during the fourth quarter of 2016, NYISO is directed to file with the Commission December 1, 2016 a status report on its software development, including the reason for the delay in implementation, and the new expected implementation date, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.