



January 26, 2022

VIA ELECTRONIC DELIVERY

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Protest Comments from the PEAK Coalition regarding the New York Independent System Operator, Inc., Tariff Filing Excluding Certain Resources from the “Buyer-Side” Capacity Market Power Mitigation Measures, Adopting a Marginal Capacity Accreditation Market Design, and Enhancing Capacity Reference Point Price Translation, Docket No. ER22-772-000

Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, the The PEAK Coalition hereby submits these comments regarding the January 5, 2022 Filing by the New York Independent System Operator, Inc. (“NYISO”) which seeks to introduce a major market design enhancement, i.e., valuing capacity based on marginal accreditation for the NYISO-administered capacity market (the “Marginal Accreditation Proposal”).¹

The PEAK Coalition is primarily concerned with (1) the lack of details in the Marginal Accreditation Proposal regarding the impacts of a marginal approach on environmental justice communities in NYCA Zone J, and (2) without that detail, the inability for PEAK Coalition members to determine how the Marginal Accreditation Proposal will impact the future renewable energy and storage resources needed in Zone J to ensure a just and equitable energy transition that is needed to meet with New York State’s statutory and policy objectives that require the State to not further disadvantage communities of color and low income New Yorkers, who disproportionately bear the burden of fossil fuel infrastructure and the impacts of climate change.

NYISO, in coordination with FERC, must establish market rules and mechanisms that support the competitive and cost-effective deployment of energy storage and other clean resources in Zone J. NYISO’s Marginal Accreditation Proposal may not do that equitably or reliably.

¹ Prepared with the assistance of counsel admitted in New York.

In addition, separately, The PEAK Coalition supports NYISO's proposed reforms to its "Buyer-Side" Capacity Market Power Mitigation Measures, which disincentivized and penalized much-needed state-sponsored renewable energy projects and increased costs to consumers.

The PEAK Coalition and the Harms of Peaker Plants in New York City

The PEAK Coalition consists of UPROSE, THE POINT CDC, New York City Environmental Justice Alliance, New York Lawyers for the Public Interest, and Clean Energy Group. The coalition seeks to end the long-standing pollution burden from power plants on the city's most climate-vulnerable people. This coalition seeks to reduce the negative and racially disproportionate health impacts of the city's peaker plants by replacing them with renewable energy and storage solutions, as well as through effective and equitable demand response and energy efficiency programs. The coalition advocates for a system of localized renewable energy generation and battery storage to replace peaker plants, reduce greenhouse gas emissions, lower energy bills and make the electricity system more resilient in the face of increased storms and climate impacts. Replacing peaker plants with clean energy alternatives also increases investments that serve local community and workforce needs rather than enriching fossil fuel companies.

Environmental justice communities in New York City bear an inequitable burden of pollution from fossil fuel power plants. Of power generated in New York City, 69 percent comes from fossil-fuel burning power plants. Many power plants in New York City – Zone J – are peaker plants. 750,000 people in New York City live within one mile of a peaker plant; 78 percent of these people are either low-income or people of color.

In 2019, 79 out of 89 peaking units in the city operated for less than 5 percent of the time (fewer than 500 hours per year) and 60 of them ran for less than 1 percent of the time (fewer than 100 hours per year). Many peaker plants run for relatively short durations and can be replaced by energy storage at competitive costs. In 2018, over 50 percent of the peaking units in the portfolio ran no more than eight hours in duration each time they fired up; 28 units, totaling 765 MW of installed capacity, had maximum run durations of four hours or less.

Annually, peaker plants in New York City emit almost 2.7 million tons of carbon dioxide, constituting nearly 5 percent of New York City's 2019 CO₂ emissions. In New York State, peaker plants contribute a tremendous amount of NO_x emissions on high-ozone days, despite providing as little as 36 percent of the gross energy load.

The owners of these infrequently-used power plants received a staggering \$4.5 billion in revenue to operate over the course of ten years— money that the PEAK Coalition urges should be invested in renewable energy solutions and green jobs in and near New York City.

The retirement of peaker plants will save customers money, with the potential to save \$1 billion in energy market costs by 2035. Retirement of the city's peaker plants would reduce annual emissions by 2.66 million tons of CO₂, 1,655 tons of NO_x, and 171 tons of SO₂. Reduced environmental and health impacts from avoided emissions would be projected to create additional savings of more than \$1 billion by 2035.

For more information, please see The PEAK Coalition's full report entitled *The Fossil Fuel End Game*.²

A Lack of Essential Information About Methodology and Impacts in NYISO's Marginal Accreditation Proposal

In its January 5, 2022 filing, with regard to the Marginal Accreditation Proposal, NYISO states that:

- it “anticipates that it will develop additional non-tariff implementation details and technical specifications related to marginal capacity accreditation with stakeholders in the NYISO's shared governance process;”
- that “[i]mplementation details and technical specifications are properly left to be addressed by the NYISO's manuals and other ISO Procedures;” and that
- it “will subsequently develop detailed procedures and software to implement the market design after the tariff amendments have been accepted by the Commission.”

But NYISO's Marginal Accreditation Proposal is lacking more than implementation details and technical specifications. The Marginal Accreditation Proposal is missing essential information about the basic structure of the methodology and models to be used, which need to be explained to FERC and stakeholders before FERC approval, not afterwards.

We also understand that many stakeholders objected to NYISO's decision to adopt the marginal approach without conducting a full analysis, including the essential details on what methodology would be used, or a full understanding of how it would be implemented and who it might impact most in the State. NYISO should go back to the beginning and do this correctly, with informed debate about what outcomes would be produced under the different methodologies, with the CLCPA's Section 7(3) equity mandates in New York State, discussed further below, at the forefront of the discussion.

Without this information, NYISO's Marginal Accreditation Proposal may not meet the definition of just and reasonable under the Federal Power Act and the regulations of the Federal Energy Regulatory Commission. NYISO's Marginal Accreditation Proposal could lead to consumers paying excessive rates for capacity. FERC must ensure all provisions of a tariff are

² https://www.peakcoalition.org/_files/ugd/f10969_e27774865535495598a21be0242560a8.pdf

just and reasonable, not that the tariff provisions are just and reasonable *on average*. Furthermore, without this information, the NYISO Marginal Accreditation Proposal may not meet the FERC “Rule of Reason.”³

Without these important components included, NYISO’s Marginal Accreditation Proposal is a blank check to develop a highly consequential accreditation methodology that may disproportionately impact Zone J’s clean energy resources allocation and/or frustrate state statutes and policies that prohibit such impact.

NYISO Regularly Incorporates State Statutory Requirements and Policies That Will Impact The Capacity Market And Resource Mix

In its filing, NYISO several times notes the impacts of New York State law on NYISO’s work:

- “Various CLCPA-related regulations are now in place that will substantially impact the existing capacity resource mix as well as future investment.” NYISO Filing at 11.
- “The NYISO has previously pointed to the “Peaker Rule” as an example of these emerging New York State policies that are likely to drive the retirement of conventional resources.” *Id.* at 12, n. 33
- “The NYISO is an independent entity, not an instrumentality of New York State, and is not directly subject to the CLCPA. Nevertheless, the NYISO’s transmission, market administration, and reliability-related responsibilities mean that the NYISO must account for the impacts of the CLCPA. Intermittent renewables and energy storage resources are already expressly favored by New York State policy. Similarly, other types of zero-emitting resources that exist now, or that may exist in the future, may be supported by future New York State programs under the auspices of the CLCPA.” *Id.* at 13.
- “It is already apparent, however, that the CLCPA and regulations adopted under it will drive resource investment and retirement decisions and, ultimately, the composition of the overall resource mix in New York. The CLCPA, and expectations regarding its implementation, are already substantially impacting new capacity market entry.” *Id.*
- “The NYISO’s market rules must evolve to reflect the dominant role that CLCPA initiatives will increasingly play in shaping the resource mix in New York State.” *Id.*
- “... the advantages of marginal accreditation will become more significant and impactful as the CLCPA requires larger quantities of investment in intermittent resources. This is a very important consideration given the enormous effect that the CLCPA is expected to have on the NYISO’s resource mix in the coming years.” *Id.* at 38.

³ The “rule of reason” requires a filer to identify which provisions affect rates and services significantly, and must include in tariff language, rather than in business practice manuals or other ancillary documentation. *See, e.g., Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

The PEAK Coalition seeks with these comments to remind NYISO and FERC of the obligations of Section 7(3) of the CLCPA: the State cannot disproportionately burden disadvantaged communities, and it must prioritize GHG and co-pollutant reductions within those communities.⁴ Disadvantaged communities are defined as communities “that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households.”⁵ As just one example, the CLCPA directs the NY Public Service Commission, in designing energy efficiency programs and programs to procure renewable energy and storage resources, to design the programs in a manner that benefits disadvantaged communities, including that the Commission shall “[t]o the extent practicable, specify that a minimum percentage of energy storage projects should deliver clean energy benefits into NYISO zones that serve disadvantaged communities . . . and that energy storage projects be deployed to reduce the usage of combustion-powered peaking facilities located in or near disadvantaged communities.”⁶

Transmission, demand response, wind and solar generation, and battery storage are all zero-emissions alternatives that would advance CLCPA goals and would not have disproportionate adverse impacts on disadvantaged communities. That means that any renewable energy generation and storage capacity must include and even preference Zone J resources, not move them into other zones. Without more information, we cannot determine whether NYISO’s Marginal Accreditation Proposal may not be consistent with statutory directives such as these. Furthermore, the preliminary study underlying the Marginal Accreditation Proposal indicates an increase in fossil fuel generation over the *status quo* method. Any possibility that peaker plants in Zone J run more frequently or for longer than absolutely necessary runs counter to the goals of this state to ensure an equitable transition away from fossil fuels.

In addition, without additional information, we cannot determine whether NYISO’s Marginal Accreditation Proposal is consistent with the State’s goal of installing 6 GW of storage by 2030 goal, much of which needs to be built in Zone J to retire the polluting peaker plants, as described above.⁷ NYISO’s Marginal Accreditation Proposal may not also not be consistent with the New York Power Grid Study, released in January 2021, that identified the need for more than 15 GW of energy storage by 2040, with 7,300 MW located in New York City and Long Island, in order to support zero-emission electricity production by 2040.⁸ NYISO’s Marginal Accreditation Proposal may not also not be consistent with the transmission planning in process under the Accelerated Renewable Energy Growth and Community Benefit Act, that seeks, among other

⁴ N.Y. E.C.L. § 75-0101 *et seq.*; N.Y. P.S.L. § 66-p.

⁵ N.Y. E.C.L. § 75-0101(5).

⁶ N.Y. P.S.L. § 66-p(7)(a).

⁷ *See, e.g.*, N.Y. State of the State.

<https://www.governor.ny.gov/sites/default/files/2022-01/2022StateoftheStateBook.pdf>; Climate Action Council's Climate Action Council Draft Scoping Plan, <https://climate.ny.gov/Our-Climate-Act/Draft-Scoping-Plan>.

⁸ N.Y. New York Power Grid Study, <https://www.nyserda.ny.gov/About/Publications/New-York-Power-Grid-Study>.

Honorable Kimberly D. Bose

January 26, 2022

Page 6

things, to support the goal of delivering at least 3,000 MW of offshore wind from Long Island to Zone J, and is part of a NYISO solicitation for transmission solutions.⁹

NYISO's Marginal Accreditation Proposal appears to only envision the minimum renewable energy and storage buildout required by CLCPA. If additional storage is built for renewable integration, NYISO's Marginal Accreditation could lead to a potential overbuild of capacity. And NYISO's Marginal Accreditation Proposal also appears to not have accounted for any additional transmission capability being built from upstate to downstate regions beyond those currently contemplated.

NYISO is required to ensure "just and reasonable" and reasoned rates. Without further details, this cannot be assured by the current Marginal Accreditation Proposal.

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In conclusion, while NYISO asserts that "a marginal accreditation design would bring benefits with respect to: (i) reliability; (ii) cost impact/market efficiencies; (iii) environment/new technology; and (iv) transparency" (NYISO Filing at 38-39), the reality is that the information in the filing is insufficient to determine whether NYISO's Marginal Accreditation Proposal is just, reasonable or reasoned, and it reflects an inadequate stakeholder engagement process that was not inclusive or informed by the necessary information concerning the proposed methodology and its impacts, which will likely increase the operations and/or extend the lives of fossil fuel plants downstate. Separately, we support NYISO's filing with regard to the reforms to the "Buyer-Side" Capacity Market Power Mitigation Measures, which have been used to erode the value of clean energy resources and undermine their ability to compete with fossil fuel generation assets in the capacity market, as well as drive up costs for consumers.

Thank you for the opportunity to submit these protest comments.

Sincerely,

Clean Energy Group
New York City Environmental Justice Alliance
New York Lawyers for the Public Interest
THE POINT CDC
UPROSE

⁹ Accelerated Renewable Energy Growth and Community Benefit Act, <https://www.nyserda.ny.gov/About/Newsroom/2020-Announcements/2020-04-03-NEW-YORK-STATE-ANNOUNCES-PASSAGE-OF-ACCELERATED-RENEWABLE-ENERGY-GROWTH-AND-COMMUNITY-BENEFIT-ACT-AS-PART-OF-2020-2021-ENACTED-STATE-BUDGET>.