

# BSM Self Supply Exemption Compliance Filing:

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**Docket ER16-1404**  
**FERC's February 20, 2020 Order**

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December 17, 2020, NYISO

# Agenda

- **Background**
- **February 20 Order's Compliance Directives**
- **Proposed Tariff Amendments**

# Background on Self Supply Exemption

- In April 2016, NYISO filed a compliance plan with FERC that, amongst other things, proposed to create a Self Supply Exemption in the BSM Rules
- On February 20, 2020, FERC ruled on the NYISO compliance filing. FERC generally accepted the NYISO's compliance filing, however, the order directs the NYISO to submit a compliance filing that limits eligibility for Self Supply LSEs to non State entities; requires modifications to the Net Long and Net Short Thresholds; and directs the NYISO to include an additional process step prior to the NYISO revoking a previously awarded Self Supply Exemption
- The NYISO's response is due December 21, 2020.

# Self Supply LSE Eligibility

- April 2016 filing proposed definition of Self Supply LSE as:

**Self Supply LSE** shall mean a Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is a Public Power Entity, “Single Customer Entity,” or “Vertically Integrated Utility. For purposes of this definition only: (i) “Vertically Integrated Utility” means a utility that owns generation, includes such generation in a non-bypassable charge in its regulated rates, earns a regulated return on its investment in such generation, and that as of the date of its request for a Self Supply Exemption, has not divested more than seventy-five percent of its generation assets owned on May 20, 1996; and (ii) “Single Customer Entity” means an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers.”

# Self Supply LSE Definition

- **Public Power Entity is currently defined in MST Section 2.16 as:  
An entity which is either (i) a public authority or corporate municipal instrumentality, including a subsidiary thereof, created by the State of New York that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public, or (ii) a municipally owned electric system that owns or controls distribution facilities and provides electric service, or (iii) a cooperatively owned electric system that owns or controls distribution facilities and provides electric service.**

# Feb 20 Order Limits Eligible Self Supply LSEs

- Para 65 of the order “accept[s] in part NYISO’s proposed eligibility criteria for the self-supply exemption, and reject[s] NYISO’s proposal to allow ‘public authorit[ies] or corporate municipal instrumentalit[ies], including a[ny] subsidiary thereof, created by the State of New York that own[] or operate[] generation or transmission and that [are] authorized to produce, transmit or distribute electricity for the benefit of the public’ to be eligible.”
- Para 66 of order states “in the Complaint Order, the Commission provided examples of load serving entities that it considered potential applicants for a self-supply exemption: “municipality, cooperative, or single customer entity.... [W]e find that allowing certain instrumentalities of the State, as contained within the definition of Public Power Entity quoted above, to be eligible for the self-supply exemption is contrary to the rationale underlying the self-supply exemption, as set forth in the Complaint Order.”

# Limits to Eligible Self Supply LSEs

- **Para 67 states that the assumption that a LSE's is incented to minimize the costs of serving its specific set of customers “does not hold true for certain instrumentalities of the State, such as NYPA, because these entities act on behalf of more than their own specific set of customers (i.e., the whole state).... The incentive of certain instrumentalities of the State to act on behalf of the whole state is critical in considering whether these [net long and net short] thresholds will achieve their intended purpose—these entities’ “other purchases from the ICAP market” must be considered substantially greater than those purchases made to serve only the entity’s specific set of customers. This results in such entities having the incentive and ability to artificially suppress ICAP market prices, contrary to the rationale underlying the self-supply exemption, as set forth in the Complaint Order.”**

# NYISO's Proposes to Amend Self Supply LSE Definition

- **“Self Supply LSE” shall mean a Load Serving Entity in one or more Mitigated Capacity Zones that operates under a long-standing business model to meet more than fifty percent of its Load obligations through its own generation and that is a ~~Public Power Entity~~ municipally owned electric system that owns or controls distribution facilities and provides electric service, a cooperatively owned electric system that owns or controls distribution facilities and provides electric service, a “Single Customer Entity,” or “Vertically Integrated Utility.” A Self Supply LSE cannot be an entity that is a public authority or corporate municipal instrumentality, including a subsidiary thereof, created by the State of New York that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public.**



# Feb 20 Order Modifies Remaining Duration of Long Term Contracts for SSE

- Para 77 of the order provides “[w]hile we accept NYISO’s proposal to require a minimum term of 10 years for Long Term Contracts, we direct NYISO to include in the further compliance filing ordered herein revisions to its Services Tariff to clarify that there must be 10 years remaining on the contract at the time the self-supply exemption applicant applies. We find that requiring a minimum of 10 years to be remaining on the contract at the time the self-supply exemption applicant applies for the exemption is necessary to ensure the exemption is only available to those load serving entities that are planning on a long-term basis. Furthermore, this is consistent with NYISO’s description of the Long Term Contract as establishing a “minimum term” of 10 years to qualify for an exemption.”

# NYISO's Proposes to Modify Contract Duration Language for Self Supply Exemption

- In 23.4.5.7.14.3 the NYISO is proposing the following modification to comply with the February Order.
  - “For purposes of Self Supply Capacity, “Existing Long Term Commitments” is the amount of Capacity that the Self Supply LSE or any of its Affiliates are projected by the ISO to receive, **which shall include** ICAP which they have a call option to receive, under a written agreement (whether stated in ICAP or otherwise,) with a minimum **term obligation** of ten years, ~~and a minimum of six years~~ remaining thereon on the Class Year Start Date....”

# Additional FERC Directives for Net Long Threshold

- Para 80 provides the Commission “accepts, subject to condition, NYISO’s proposed net-short and net-long thresholds. Specifically, as discussed below, we direct NYISO to include in the further compliance filing ordered herein revisions to its Services Tariff to: (1) calculate the net-long threshold on the portion of the load serving entities’ customer base that is truly long-term; (2) include capacity that a self-supply load serving entity sold through the sale of a physical asset in the net-long threshold calculation; and (3) calculate Total Capacity Costs without Entry and Total Capacity Costs with Entry for purposes of the net-short threshold accounting for the nested structure of locational UCAP supply obligations in NYISO’s ICAP markets.
- Further in Para 90, FERC provides that, “the objective of the [net-short and net-long] thresholds is to prevent a load serving entity from manipulating ICAP market prices in a way that benefits the load serving entity’s other purchases from the ICAP market. We find that NYISO’s proposal accomplishes this objective. However, we direct NYISO to include in the further compliance filing ordered herein revisions to its Services Tariff to calculate the net-long threshold based on the portion of the load serving entity’s customer base that is truly long-term, as discussed below.”
- And Para 94 “direct[s] NYISO to revise its net-long threshold calculation to clarify that the customer base for the net-long threshold will only include truly long-term customers, which would include captive ratepayers or ratepayers that are “sticky” because of an ongoing long-term relationship or obligation to serve. We find this clarification necessary to ensure that load serving entities are only granted the self-supply exemption based on long-term customers, consistent with the Commission’s rationale for directing NYISO to implement a self-supply exemption.”

# Additional FERC Directives for Net Long & Net Short Threshold

- Para 98 “accept[s], subject to condition, NYISO’s proposed definition of additional self-supply capacity. In particular, we direct NYISO to include in the further compliance filing ordered herein revisions to its Services Tariff to also include capacity that a self-supply load serving entity sold through the sale of the physical asset itself in the net-long threshold calculation, along with bilateral power purchase agreements. We agree with MMU that the sale of a physical asset would have the same effect as a bilateral power purchase agreement, and, therefore, that capacity should be included in the net-long threshold. As with bilateral power purchase agreements, the sale of a physical asset could allow a self-supply load serving entity or its affiliates to build a new resource that qualifies for a self-supply exemption, sell the physical asset to satisfy the net-long threshold, and then receive a self-supply exemption to build another new resource. While we agree with State Entities that NYISO’s proposed definition of additional self-supply capacity could be interpreted to include all MW granted a self-supply exemption, including those sold through the sale of a physical asset, NYISO’s proposed Services Tariff language does not explicitly state that both the physical sale of an asset and the sale of capacity through bilateral power purchase agreements are included in the definition of additional self-supply capacity. We therefore find that the additional language discussed herein will provide further needed clarity.
- Para 102 provides “[w]e accept, subject to condition, NYISO’s proposed definitions of Total Capacity Costs without Entry and Total Capacity Costs with Entry. We share State Entities’ concerns and condition acceptance of NYISO’s proposed net-short threshold on NYISO including in the further compliance filing ordered herein revisions to its Services Tariff to calculate Total Capacity Costs without Entry and Total Capacity Costs with Entry for purposes of the net-short threshold accounting for the nested structure of locational UCAP supply obligations in NYISO’s ICAP markets. We agree with State Entities that NYISO’s net-short threshold calculation, as proposed, would overstate the impact of a self-supply exemption applicant’s entry because the Total Capacity Costs without Entry and Total Capacity Costs with Entry fail to consider the nested structure of NYISO’s ICAP markets—capacity purchased to meet the capacity obligation in one locality also counts toward meeting the capacity obligation of NYCA, as well as any other locality in which it is nested. Therefore, NYISO’s net-short threshold should account for the nested structure of locational UCAP supply obligations in the ICAP markets to ensure that UCAP counts toward both the load serving entity’s UCAP supply obligations for the locality and for any other localities that contain the locality, as well as for NYCA as a whole.”

# Tariff Amendments to Limit Net Long Threshold to Include Only Captive or ‘Sticky’ Rate Payers

- *For the purposes of Section 23.4.5.7.14-3, “Projected ICAP Requirements” is the amount of ICAP MW reasonably projected by the ISO/ICAP MW that reflects the expected obligations of the Self Supply LSE, and all its Affiliates, to satisfy the ICAP Requirements of its long term customers. This amount will equal the sum of the total amounts projected by the ISO that will be required to be purchased in each Locality and the NYCA for its long term customers. Such projection shall be based on the Self Supply LSE’s and all its Affiliates’ share(s) of the Locational Minimum Unforced Capacity Requirements and the NYCA Minimum Unforced Capacity Requirement, as applicable and in accordance with ISO Procedures, over the three most recently completed Capability Years preceding the Class Year Start Date and any incremental long term customers that have entered contracts with the Self Supply LSE or its Affiliates with a term of 10 years or more prior to the Class Year Study’s Initial Decision Period. Such projection shall also reflect that ICAP MW purchased in a Locality may be used to meet capacity requirements for each Locality in which they are contained, as well as for the NYCA.*

# Changes addressing the sale of a physical asset by the SS LSE in the net-long threshold calculation

- *NYISO intends to clarify that the partially accepted tariff addresses this concern.*
- *For the purposes of Section 23.4.5.7.14.3, “**Additional Self Supply Capacity**”, for a given Locality (or the NYCA,) is the ICAP MW of a Generator or UDR project that were granted a Self Supply Exemption at the time of the completed Class Year based on the Self Supply LSE or any of its Affiliates’ being a Self Supply LSE for such Generator or UDR project, in the 10 year period immediately preceding the Class Year Start Date of the Class Year, in that Locality (or the NYCA), excluding: (i) any ICAP MW that are included in Self Supply Capacity, (ii) any ICAP MW associated with a Generator or UDR project that the Self Supply LSE and any of its Affiliates own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that the CRIS of which is projected by the ISO to be expired on or before the date that marks the end of Mitigation Study Period, based on a demonstration by the Self Supply LSE; and (iii) any ICAP MW of a Generator or UDR project that neither the Self Supply LSE nor any of its Affiliates own directly or indirectly, at least a 50.01% interest (in the aggregate) as of the Class Year Start Date, or have the power to direct the management or policies of, and that is an Expected Retirement.*
- *Section 23.4.5.7.14.3.2 then calculates Net Long as – “The “Total Self Supply Capacity” is the sum, in each Mitigated Capacity Zone, of ICAP MW of (A) Self Supply Capacity, (B) **Additional Self-Supply Capacity**, and (C) the cumulative quantity of the Self Supply LSE’s and all of its Affiliates’ SSE Evaluated ICAP. “*

## Changes addressing the net short threshold calculation for the nested structure of the Localities in ICAP Market

- *The Net Short Threshold will be satisfied for the “SSE Evaluated ICAP” if the ISO determines that, summed over all Localities and the NYCA, the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs without Entry” are expected to be less than the Self Supply LSE’s and all of its Affiliates’ “Total Capacity Costs with Entry” when accounting for the nested structure of the Self Supply LSE’s ICAP Requirements as discussed in 5.11.*

# FERC Directives for Revocation of SSE

- In Para 141 FERC "accept[s], subject to condition, NYISO's proposed revocation provisions for the renewable resources and self-supply exemptions. We find that the proposed revocation provisions are appropriate because, consistent with the Complaint Order, they narrowly tailor the exemptions to circumstances in which renewable resources and self-supply load serving entities have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices. NYISO's proposed revocation provisions ensure that, under the circumstances that NYISO outlines, resources lose their exemption if they no longer qualify (or if they should never have qualified in the first place) for the applicable exemption. However, as discussed below, we direct NYISO to include in the further compliance filing ordered herein, revisions to its Services Tariff that provide an opportunity for an exemption holder to explain to NYISO why revocation may be inappropriate before NYISO revokes either exemption."
- And in Para 146 FERC states "[w]hile we generally accept NYISO's revocation provisions for the renewable resources and self-supply exemptions, we condition our acceptance on NYISO providing renewable resources and self-supply exemption applicants an opportunity to explain why revocation may be inappropriate. NYISO should use the language in Proposed Services Tariff Section 23.4.5.7.14.5 as a model."



# Amendments for Stakeholder Notice and Appeal of SSE Revocation

## ***23.4.5.7.14.5 Revocation of a Self Supply Exemption***

***(a) If, at the time prior to the SSE Applicant first producing or transmitting, Energy it or the Self Supply LSE no longer satisfies the requirements of Section 23.4.5.7.14.1(b) or no longer meets the requirements of the Acknowledgement and Certification, the SSE Applicant and the Self Supply LSE shall notify each other and ~~other~~ the ISO in writing within 3 business days of the event or basis for the failure to meet the requirements for a Self Supply Exemption. ~~Upon~~ Within 10 business days of its receipt of this notification, the ISO shall provide written notice of its intent to revoke the Self Supply Exemption that specifies its findings. The ISO will provide an opportunity for the SSE Applicant of Self Supply LSE to schedule a joint meeting with the ISO within 20 business days from the date of its notice of intent to revoke the Self Supply Exemption. The purpose of the meeting will be to allow the submittal of additional documentation and other facts that could rebut the findings of the ISO that were identified in its notice of intent to revoke the Self Supply Exemption. The ISO shall determine within 10 business days of this joint meeting whether the revocation of the Self Supply Exemption shall be finalized and then shall post on its website its determination to revoke the Self Supply Exemption. If the ISO ~~shall~~ revokes the Self Supply Exemption, ~~and apply~~ the Generator will be subject to the Mitigation Net CONE Offer Floor (such value calculated based on the date it first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of this Services Tariff.)***

# Amendments for Stakeholder Notice and Appeal of SSE Revocation

## ***23.4.5.7.14.5 Revocation of a Self Supply Exemption***

*(c) Where the ISO reasonably believes that a request for a Self Supply Exemption was granted based on (i) false, misleading, or inaccurate information, or (ii) the Self Supply LSE's inclusion within "Self Supply Capacity" (as that term is used in Section 23.4.5.7.14.3) of a Generator, CSR, or UDR project's capacity that was identified by the Self Supply LSE whose CRIS was projected to expire before the end of the Mitigation Study Period but has not expired on or before the date that marked the end of the Mitigation Study Period, the ISO shall notify the SSE Applicant or the Owner/Operator of the Generator, CSR, or UDR, and the Self Supply LSE that the Self Supply Exemption may be revoked in writing. The written notice shall provide to the Self Supply Applicant, or the Owner/Operator of the Generator, CSR or UDR, and the Self Supply LSE an opportunity to submit documentation to the ISO and meet jointly with the ISO to rebut the ISO's findings within 30 days from the date of the ISO's written notice. The ISO shall determine within 10 business days of this meeting whether the revocation of the Self Supply Exemption shall be finalized and post on its website its determination to revoke the Renewable Exemption. ~~Where Provided that 30 days written notice has been given to the SSE Applicant (such notice to the extent practicable,) the ISO may revoke the Self Supply Exemption and apply,~~ the Generator, CSR or UDR shall be **subject to** the Mitigation Net CONE Offer Floor (such value calculated based on the date the SSE Applicant first offers UCAP, in accordance with Section 23.4.5.7.3.7, and adjusted annually in accordance with Section 23.4.5.7 of this Services Tariff.) Prior to the revocation of a Self Supply Exemption and the submission of a report to the Commission's Office of Enforcement (or any successor to its responsibilities,) the ISO shall provide the SSE Applicant an opportunity to explain any statement, information, or action, and if a statement information or action of the Self Supply LSE, it shall also provide an opportunity to that entity. The ISO cannot revoke the Self Supply Exemption until after the 30 days written notice period has expired, unless ordered to do so by the Commission.*

# Miscellaneous Tariff Updates and Clarifications

- Various conforming changes to update 23.4.5.7.14 of MST for subsequent filed tariff enhancements and typo fixes

# Next Steps

- **NYISO plans to submit Compliance filing on Monday, December 21.**