

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

New York Independent System Operator, Inc.)

Docket No. ER16-1404-000

**MOTION TO INTERVENE AND COMMENTS
OF THE
NEW YORK ISO'S MARKET MONITORING UNIT**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 C.F.R. §§ 385.212 and 214 (2007), Potomac Economics respectfully moves to intervene in the above-captioned proceedings.¹ The Commission has ordered the New York Independent System Operator (“NYISO”) to develop tariff provisions to exempt certain renewable generators and self-supply arrangements from the buyer-side mitigation rules. Potomac Economics is the Market Monitoring Unit (“MMU”) for NYISO and is responsible for monitoring the electricity markets and evaluating potential rule changes that impact these markets.

I. NOTICE AND COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:

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¹ We respectfully ask the Commission to accept these comments, which are one day out of time.

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II. BACKGROUND AND PURPOSE

This proceeding resulted from a complaint by the New York Public Service Commission (“NYPSC”), New York Power Authority (“NYPA”), and the New York State Energy Research and Development Authority (“NYSERDA”) that sought to modify the NYISO Services Tariff to create exemptions from the buyer-side mitigation (“BSM”) rules. The BSM rules are used in certain capacity zones (New York City and Lower Hudson Valley) to prevent entities from artificially depressing prices below competitive levels by subsidizing the entry of *new* uneconomic capacity.

On October 9, 2015, the Commission issued an order requiring the NYISO to file tariff provisions that would create limited exemptions from the buyer side market power mitigation measures for: (a) self-supply arrangements and (b) intermittent renewable generators.² On April 13, 2016, the NYISO submitted a compliance filing (“NYISO’s Compliance Filing”) with proposed tariff provisions following lengthy stakeholder discussions.

These comments discuss our concerns with some of provisions proposed by the NYISO in its compliance filing. Section III addresses the proposed exemption for intermittent renewable generators. Section IV addresses several aspects of the proposed Self-Supply Exemption (“SSE”). Section V provides our conclusions and recommendations.

² *New York Public Services Commission, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 (2015). (“October 2015 Order”)

III. Comments on the Renewable Exemption

The Commission required the NYISO to develop rules to exempt certain intermittent renewable generation that have “limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.”³ The Commission also required the NYISO to apply a megawatt cap “to further limit any risk that these exempted resources will impact NYISO’s ICAP market prices” and indicated that ISO-NE’s renewable exemption should serve as a model with a 200 MW limit—a level comparable to the annual load growth in New England at the time it was proposed.⁴

The NYISO’s Compliance Filing proposed a 1,000 MW cap per class year in the G-J Locality, which is located in southeast New York. Renewables entering in other zones are not subject to mitigation and would not count against the cap. Importantly, the cap proposed by NYISO is applied to the installed capacity (“ICAP”) value of the resource rather than the unforced capacity (“UCAP”) value, although the NYISO runs a market for UCAP. The UCAP values of onshore wind and solar generators are 10 and 46 percent of their respective ICAP values during the summer capability period. This illustrates that the capacity market impact of 1,000 MW of ICAP of renewables is heavily dependent on the renewable technology selected. Since the expressed purpose of the megawatt cap is to limit the risk that renewable resources significantly impact NYISO capacity prices, we recommend that the Commission require the NYISO to propose a UCAP-based cap.⁵

³ October 2015 Order at P 47.

⁴ October 2015 Order at P 51.

⁵ The UCAP value is the best reflection of the capacity value of a resource. Over time, the introduction of large quantities of intermittent resources will raise the ICAP requirement while leaving the UCAP requirement relatively unaffected because of the interaction of the following two processes. First, the UCAP requirement is equal to the ICAP requirement times (1 minus the Derating Factor) where the Derating Factor is (1 minus the weighted-average of the UCAP-to-ICAP ratio of all resources). Thus, adding low UCAP-to-ICAP ratio resources such as wind turbines causes the UCAP requirement to fall relative to the ICAP requirement. Second, when the New York State Reliability Council sets the ICAP

If one were to assume that 1,000 MW of renewable capacity would have a UCAP value of approximately 25 percent, the corresponding UCAP-based cap would be around 250 MW. This is higher than in ISO-NE, but ISO-NE has more than twice the installed capacity requirement of the G-J Locality. The NYISO forecasts annual load growth of just 29 MW in the G-J Locality and 22 MW in New York City from 2016 to 2026.⁶

Given the size the cap compared to the forecasted load growth in the G-J Locality, one should expect that capacity prices will likely fall significantly and/or lead to generator retirements. The G-J Locality contains 4.4 GW of capacity that was installed before 1970, including 2.8 GW that is dual-fueled and 2.3 GW that is located on the 138kV system in New York City. Falling capacity prices would likely cause some generators to give notice of retirement. Many of these resources are likely needed for reliability to manage congestion into the New York City load pockets or to maintain the stock of dual-fueled generation needed in eastern New York in the winter. Hence, we would expect RMR agreements would necessary to retain some of these units, which would further increase costs to New York's consumers. Applying a reasonable cap will help limit these costs. Therefore, in addition to requiring a UCAP-based cap, the Commission should encourage NYISO to more fully consider forecasted load growth in establishing the cap level.

IV. Comments on the Self-Supply Exemption

The Commission also ordered the NYISO to develop a Self-Supply Exemption ("SSE"), reasoning that "if a load serving entity, such as a municipality, cooperative, or single customer entity, self-supplies the majority of its needed capacity, the amount of capacity it procures from

requirements, it takes into consideration the low capacity value of intermittent renewable resources, so this causes the ICAP requirement to rise.

⁶ See 2016 NYISO Goldbook, Tables I-2b-1 & I-2b-2.

the ICAP markets will be relatively small.”⁷ However, we are concerned that the NYISO’s proposed SSE will create significant loop holes in the buyer-side mitigation rules that would allow for large-scale investment that is designed to suppress capacity prices below competitive levels, contrary to the Commission’s expressed intent. We discuss our specific concerns with the proposed SSE in this section.

A. Implementation of Net Short Threshold

The Commission ordered the NYISO to develop a net-short and net-long thresholds to ensure the SSE is only granted to an LSE that “does not have the incentive and ability to artificially suppress ICAP market prices.”⁸ However, the NYISO’s proposed implementation of the net-short and net-long thresholds will not satisfy this objective. The Commission stated the net-short threshold:

“should be tight enough to prevent a load serving entity from being able to deliberately overpay for a resource in an attempt to manipulate ICAP market prices in a way that benefits the load serving entity’s other purchases from the ICAP market.”⁹

Hence, the net-short threshold is designed assuming that the incentive of an LSE “such as a municipality, cooperative, or single customer entity” is related to the costs of serving a specific set of customers.¹⁰ This is reasonable for most LSEs because most LSEs would only be concerned with the costs of serving their customers. However, this is not true for the New York Power Authority (“NYPA”) because NYPA’s stated mission is to act on behalf of *all* New York customers, not just the limited portion of customers that NYPA serves.¹¹ Therefore, if NYPA is

⁷ October 2015 Order at P 61.

⁸ October 2015 Order at P 62.

⁹ October 2015 Order at P 62.

¹⁰ October 2015 Order at P 61.

¹¹ “The Authority’s mission is to provide clean, economical and reliable energy consistent with its commitment to safety, while promoting energy efficiency and innovation, for the benefit of its customers and *all New Yorkers*.” See 2012 Annual Report, Notes on Financial Statements #12.

eligible for the SSE as NYISO proposes, we recommend that its net short threshold be based on all New York load rather than just its recent customers.

B. Net Long Threshold

The NYISO was directed to apply a net-long threshold because the SSE should “be limited to load serving entities whose ICAP portfolios are consistent with reasonably anticipated levels of their future ICAP obligations.”¹² However, the NYISO proposes to base the net-long threshold on the LSE’s ICAP obligations in recent years, regardless of whether the LSE has a long-term obligation to serve those customers as would a municipality or cooperative with a specific service territory. We have two principal concerns that NYISO’s proposal does not address.

First, since the vast majority of New York State customers are under retail competition, the NYISO’s proposed net-long threshold would allow a public power entity to attract new retail customers with no long-term commitment for the purpose of facilitating its obtaining a SSE for a new generator.¹³ The SSE has been justified because it allows an LSE to hedge long-term load obligations and plan for future needs.¹⁴ However, the NYISO’s proposal would allow an LSE to

In contrast, the Long Island Power Authority’s scope is geographically limited to a subset of New York customers, making it more straightforward to apply the net-short threshold envisioned by the Commission: “Our Mission is to ensure the provision of reliable, economical and responsive electric service to *1.1 million customers on Long Island and in the Rockaways*, meet the expectations of our bond holders and be a trusted, valued member of the community.” See <http://www.lipower.org/profile/mission.html>.

¹² October 2015 Order at P 62.

¹³ For instance, consider an LSE that owns 2.2GW of generation in Zone J. Assume that the LSE has a UCAP obligation of 2.5GW and acquires 100 MW of new customers every year starting in 2015 with the intention of adding capacity. Under the NYISO’s proposal, given the current demand curve parameters, an assumed excess level of six percent, the LSE can add 800 MW of new capacity over a period of five years from 2018 through 2022 even though the ICAP market prices are well below the long term equilibrium.

¹⁴ October 2015 Order at P 64 discusses the purpose of the SSE: “...to procure a supply portfolio to better meet their needs and hedge against future fuel or capacity market prices can be appropriate. There may be a higher degree of cost certainty in the construction of a new generator or in a long-term power purchase agreement than there is in ICAP market price forecasts, so the short-term ICAP product and a long-term energy investment are not perfect substitutes for each other. Therefore, a well-formulated self-supply exemption can provide an important protection against potential ICAP market volatility. Also, by entering into long-term commitments to serve their own load, these select entities can provide better price stability

develop a 30-year asset for the ostensible purpose of “hedging” load customers with no long-term commitment -- this would be the opposite of a hedge.

Second, the NYISO proposal addresses the concern that a Self-Supply LSE could engage in bilateral sales to repeatedly qualify for SSEs by including the associated capacity in the supply that goes into the net-long threshold calculation. However, it does not address the sale of physical assets, which would have the same effect as a bilateral sale. Therefore, an LSE could lower capacity prices by selling an asset and simultaneously building an uneconomic new resource to replace it.

Hence, we recommend that the Commission require the NYISO to modify its net-long threshold test to: a) base it on the portion of the LSE’s customer base that is truly long-term, and b) exclude the sale of physical assets.¹⁵

C. Other Rules to Prevent Inappropriate Use of the SSE

The NYISO’s compliance filing proposes to allow multiple LSEs to develop and apply for a SSE jointly, since many such entities will be too small to develop a project individually. The NYISO identifies a potential concern with such arrangements and proposes a measure to: “prevent one Self-Supply LSE from bearing a disproportionate share of a proposed new Generator’s development costs, in order to reduce the other Self Supply LSE’s costs to procure capacity from the Generator and in order to incentivize the other Self Supply LSE to procure new, exempt capacity when it otherwise might not have been in that Self Supply LSE’s interest to do so.”¹⁶ To address this concern, the NYISO imposes a certification requirement requiring

for their customers and make decisions that may be more uniquely tailored to their needs than the broader market will allow.”

¹⁵ Long-term customers include captive ratepayers or ratepayers that are sticky because of an ongoing long-term relationship or obligation to serve.

¹⁶ NYISO Compliance Filing at Page 25. For example, suppose two Self Supply LSEs purchase 100 MW of a 200 MW project, but one LSE (who is motivated to suppress capacity prices) agrees to pay \$200 per KW-year while the second LSE agrees to pay \$100 per KW-year. The second LSE need not know that it is receiving a discounted share of the project costs.

the Self Supply Applicant and each Self Supply LSE to certify that no arrangement exists to cross-subsidize.

We believe this certification requirement is insufficient because a Self-Supply LSE can subsidize a project by incurring a disproportionately large share of the cost without communicating this fact to the Self-Supply Applicant or the other Self-Supply LSEs. To more effectively address this concern, we recommend that the Commission require each Self Supply LSE that backs a SSE to bear a share of the embedded cost of the project commensurate with the benefits it receives. This will help ensure that one Self Supply LSE does not bear a disproportionately large share of the embedded cost of a proposed self-supply project in order to secure an exemption that would allow it to circumvent the buyer-side mitigation rules.

Lastly, we strongly support the proposed provisions that would prevent a Self-Supply Applicant from having contracts or other arrangements whereby it would receive revenue or other benefits from entities other than the Self Supply LSE(s) in return for developing the project. These will help ensure that a Self-Supply project is not subsidized directly or indirectly by a third party that has an incentive to suppress capacity prices.

V. CONCLUSIONS

The NYISO has proposed limited exemptions from the buyer-side mitigation measures for certain renewable generators and self-supply arrangements. However, we have several concerns with the NYISO proposal.

The proposed renewable exemption does not satisfy the Commission objective to “limit any risk that these exempted resources will impact NYISO’s ICAP market prices.” To address this concern, we recommend that the Commission:

- Require the NYISO to propose a UCAP-based cap that takes into consideration the projected load growth over the coming decade.

The proposed self-supply exemption would create a some significant loop holes in the buyer-side mitigation measures for entities that may have an incentive to suppress capacity prices. To address these concerns, we recommend that the Commission require several modifications to the NYISO proposal:

- If a public power entity with statewide geographic scope is eligible for this exemption, we recommend that its net short threshold be based on *all* New York load, rather than just customers it has served in recent years.
- Since New York is a retail competition state, we recommend NYISO base the net-long threshold on the portion of a Self Supply LSE's customer base that is captive or otherwise under a long-term obligation to remain with the Self Supply LSE.
- We recommend the Commission require each Self Supply LSE that backs a SSE project to bear a share of the embedded cost of the project commensurate with the benefits it receives.

With these changes, we believe the proposed exemptions will achieve the objectives established in the Commission's Order without allowing entities to circumvent the buyer-side mitigation rules.

Respectfully submitted,

/s/ David B. Patton

David Patton
President
Potomac Economics, Ltd.

June 1, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 1st day of June 2016 in Fairfax, VA.

/s/ David B. Patton
